2694. By Mr. LINDSAY: Petition of Openers and Packers' Association, United States Customs Service, appraisers' stores, port of New York, 641 Washington Street, New York City, justly pleading for a living wage, they having presented a scale of $1,680 as a minimum to $2,040 as a maximum per year. The men employed in the customs service are now working under a scale lower than that which is paid to the men employed in the industrial and mercantile establishments. It seems only fair and proper that the Government should recognize the claims of men who are rendering good and faithful service; to the Committee on the Civil Service.

2695. By Mr. RAKER: Petition of McKinley Camp, No. 23, United Spanish War Veterans, and McKinley Auxiliary, United Spanish War Veterans, Long Beach, Calif., urging passage of Bursum bill over presidential veto; to the Committee on Invalid Pensions.

2696. Also, petition of Emergency Radio Tax Committees, 165 Broadway, New York City, protesting against 10 per cent tax on radios; to the Committee on Ways and Means.

2697. By Mr. WILSON of Indiana: Petition signed by 40 citizens of Newburgh, Ind., recommending that the McNary-Haugen bill be passed by the Sixty-eighth Congress; to the Committee on Agriculture.

SENATE

THURSDAY, *May 8, 1924*

(Legislative day of Monday, May 5, 1924)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

Mr. SMOOT. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The Secretary will call the roll.

The principal clerk called the roll, and the following Senators answered to their names:

Adams	Ferris	Ladd	Sheppard
Ashurst	Fess	Lodge	Shields
Ball	Fletcher	McKellar	Shipstead
Bayard	Frazier	McKinley	Shortridge
Borah	George	McLean	Simmons
Brandegee	Gerry	McNary	Smith
Broussard	Glass	Mayfield	Smoot
Bruce	Gooding	Moses	Spencer
Bursum	Hale	Neely	Stanfield
Cameron	Harreld	Norbeck	Stephens
Capper	Harris	Norris	Sterling
Caraway	Harrison	Oddie	Swanson
Colt	Heflin	Overman	Trammell
Copeland	Howell	Pepper	Wadsworth
Cummins	Johnson, Calif.	Phipps	Walsh, Mass.
Curtis	Johnson, Minn.	Pittman	Walsh, Mont.
Dale	Jones, N. Mex.	Ralston	Warren
Dial	Jones, Wash.	Ransdell	Watson
Dill	Kendrick	Reed, Mo.	Weller
Edge	Keyes	Reed, Pa.	Willis
Ernst	King	Robinson	

Mr. CURTIS. I wish to announce that the junior Senator from Wisconsin [Mr. LENROOT] is absent on account of illness. I will let this announcement stand for the day.

I was requested to announce that the Senator from Iowa [Mr. BROOKHART] and the Senator from Montana [Mr. WHEELER] are detained at a hearing before a special investigating committee of the Senate.

The PRESIDENT pro tempore. Eighty-three Senators have answered to the roll call. There is a quorum present.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House agreed to the amendments of the Senate to the joint resolution (H. J. Res. 195) authorizing an appropriation for the participation of the United States in two international conferences for the control of the traffic in habit-forming narcotic drugs.

The message also announced that the House had passed bills and a joint resolution of the following titles:

S. 2392. An act authorizing an appropriation to indemnify damages caused by the search for the body of Admiral John Paul Jones;

S. 2998. An act providing for a study regarding the equitable use of the waters of the Rio Grande below Fort Quitman, Tex., in cooperation with the United States of Mexico; and

S. J. Res. 104. Joint resolution requesting the President to invite the Interparliamentary Union to meet in Washington City in 1925, and authorizing an appropriation to defray the expenses of the meeting.

The message further announced that the House had passed a joint resolution (H. J. Res. 248) to provide for the remission of further payments of the annual installments of the Chinese indemnity, in which it requested the concurrence of the Senate.

REQUESTS FOR UNANIMOUS CONSENT

Mr. HOWELL. Mr. President, out of order, I ask unanimous consent to introduce a bill.

The PRESIDENT pro tempore. Is there objection to the reception of the bill?

Mr. ASHURST. On that I wish to be heard.

The PRESIDENT pro tempore. The Senator from Nebraska asks unanimous consent, out of order, to introduce a bill. Is there objection?

Mr. ASHURST. I reserve the right to object. I wish to discuss a matter.

The PRESIDENT pro tempore. The Chair is of the opinion that when unanimous consent is asked the matter is not debatable.

Mr. ROBINSON. What is the request?

The PRESIDENT pro tempore. The Senator from Nebraska [Mr. HOWELL] asks unanimous consent to introduce a bill at this time out of order.

Mr. ASHURST. I respectfully appeal to the Chair for information. Does the Chair hold that when a request is made for unanimous consent the matter is not debatable?

The PRESIDENT pro tempore. That is the opinion of the Chair.

Mr. ASHURST. That is to say, any request for unanimous consent is not debatable?

The PRESIDENT pro tempore. That is the judgment of the Chair.

Mr. ASHURST. I do not complain. The Chair has been fair and firm. I simply desire to know that hereafter in all cases when any request for unanimous consent is made, it is not debatable. That is a good rule, and if it were adhered to it would promote the efficiency of the Senate. The Chair has rendered a great service to-day in so holding, and if he will continue to hold that whenever a request is made for unanimous consent it is not debatable, it will be a good rule for the Senate.

The PRESIDENT pro tempore. It may be remarked that it is the common practice.

Mr. ROBINSON. Mr. President, it is fair to state that under the practice of the Senate a request for unanimous consent is sometimes discussed by unanimous consent, and that practice, of course, will continue. Any Senator has it within his power, however, by objecting, to end the debate or discussion. The ruling of the Chair is, of course, correct.

Mr. LODGE. The debate itself must be by unanimous consent.

Mr. ASHURST. Of course the ruling of the Chair is correct. I agree with the Senator from Arkansas.

The PRESIDENT pro tempore. The Senator from Arkansas has correctly stated the understanding of the Chair. The question is often discussed by unanimous consent.

Mr. ASHURST. But not this morning. It can not be discussed this morning?

Mr. ROBINSON. It can, unless some Senator objects.

The PRESIDENT pro tempore. The Chair by unanimous consent has allowed colloquies to intervene upon an application for unanimous consent.

Mr. ASHURST. But the Chair will not permit such colloquies this morning? Is that the ruling?

The PRESIDENT pro tempore. The Chair recognizes the Senator from Arizona to discuss the question of the unanimous-consent request.

Mr. ASHURST. The Chair can not recognize me to discuss a particular question. I can discuss any question.

The PRESIDENT pro tempore. The Chair does not recognize the Senator for any purpose except to discuss the propriety of the unanimous-consent request.

Mr. ASHURST. I would not indulge in such tactics. I could not say frankly that I wish to discuss that question. I simply want to be heard upon another question, and it would be unfair to the Chair to pretend that I wish to discuss the request of the Senator from Nebraska. I want to discuss another subject, as we may do under our rules, but I do not wish to cavil with the Chair. The Chair has been fair and, I think, has been correct.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Nebraska? The Chair hears none, and the bill will be received and properly referred.

[The bill introduced by Mr. HOWELL appears under its appropriate heading.]

PETITIONS

Mr. WILLIS presented resolutions adopted at the annual meeting held in Toledo, Ohio, by the Ohio Society, Sons of the American Revolution, favoring the restoration of the Regular Army to the minimum strength recommended by the Secretary of War and in accord with the provisions of the national defense act of 1920, consisting of 13,000 officers and 150,000 enlisted men, and that sufficient appropriations be made to develop and instruct the Army and its various components, including the Reserve Officers' Training Corps and the Citizens' Military Training Corps; etc., which were referred to the Committee on Appropriations.

Mr. NORBECK presented the petition of Zenas R. Gurley and 54 other citizens of Armour, Douglas County, S. Dak., praying for the passage of the so-called McNary-Haugen export corporation bill, which was referred to the Committee on Agriculture and Forestry.

He also presented a resolution of the Clark Commercial Club, of Clark, S. Dak., favoring the passage of the so-called McNary-Haugen export corporation bill, which was referred to the Committee on Agriculture and Forestry.

He also presented the petition of Jonas Minot and 39 other citizens of Beresford, S. Dak., praying for the passage of the so-called McNary-Haugen export corporation bill, and also the leasing of the Muscle Shoals property to Henry Ford, which was referred to the Committee on Agriculture and Forestry.

REPORTS OF COMMITTEES

Mr. STANFIELD, from the Committee on Civil Service, to which was referred the bill (S. 3010) to amend the classification act of 1923, approved March 4, 1923, reported it without amendment.

Mr. GLASS, from the Committee on the District of Columbia, to which was referred the bill (S. 2803) to regulate within the District of Columbia the sale of milk, cream, and certain milk products, and for other purposes, reported it without amendment and submitted a report (No. 508) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. HOWELL:

A bill (S. 3262) to authorize a loan of $25,000,000 to the Government of Germany to be used in purchasing in the United States grain and other food supplies for the relief of destitute women and children in Germany, and for other purposes; to the Committee on Foreign Relations.

By Mr. SWANSON:

A bill (S. 3263) to provide for the inspection of the battle fields in and around Fredericksburg and Spotsylvania Court House, Va.; to the Committee on Military Affairs.

By Mr. BALL:

A bill (S. 3264) for the relief of Horace G. Knowles (with an accompanying paper); to the Committee on Claims.

By Mr. WILLIS:

A bill (S. 3265) for the relief of Joseph Maier (with accompanying papers); to the Committee on Claims.

A bill (S. 3266) granting an increase of pension to Margaret R. Sharpe (with accompanying papers); to the Committee on Pensions.

By Mr. COPELAND:

A bill (S. 3267) authorizing the Court of Claims of the United States to hear and determine the claims of persons or corporations who rendered services or furnished supplies used on certain steamships owned by the United States; and

A bill (S. 3268) for the relief of owners of cargo aboard the steamship *Boxley;* to the Committee on Claims.

By Mr. McKELLAR (for Mr. EDWARDS):

A bill (S. 3269) to amend an act regulating the height of buildings in the District of Columbia, approved June 1, 1910; to the Committee on the District of Columbia.

WORLD COURT OF INTERNATIONAL JUSTICE (S. DOC. NO. 107)

Mr. LODGE. I introduce a joint resolution for reference to the Committee on Foreign Relations, and I ask to have the printed pamphlet printed with it and printed as a Senate document.

The joint resolution (S. J. Res. 122) requesting the President to propose the calling of a third Hague conference for the establishment of a World Court of International Justice was read twice by its title and, with the accompanying paper, referred to the Committee on Foreign Relations.

On motion of Mr. LODGE, the accompanying paper, entitled "A plan by which the United States may cooperate with other nations to achieve and preserve the peace of the world," was ordered to be printed as a document.

AMENDMENT TO CIVIL SERVICE RETIREMENT ACT

Mr. BROUSSARD submitted an amendment intended to be proposed by him to the bill (S. 3011) to amend the act entitled "An act for the retirement of employees in the classified civil service, and for other purposes," approved May 22, 1920, and acts in amendment thereof, which was referred to the Committee on Civil Service and ordered to be printed.

AMENDMENT TO RIVER AND HARBOR BILL

Mr. BROUSSARD submitted an amendment providing for the preliminary examination and survey of the West Fork of Bayou Chene, La., known as Bayou Crook Chene, with a view to opening this waterway to navigation by the removal of drift and snags, intended to be proposed by him to the bill (H. R. 8914) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, which was referred to the Committee on Commerce and ordered to be printed.

HOUSE JOINT RESOLUTION REFERRED

The joint resolution (H. J. Res. 248) to provide for the remission of further payments of the annual installments of the Chinese indemnity was read twice by its title and referred to the Committee on Foreign Relations.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 8233) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1925, and for other purposes, requested a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. WOOD of Indiana, Mr. WASON, and Mr. SANDLIN were appointed managers on the part of the House at the conference.

INDEPENDENT OFFICES APPROPRIATIONS

Mr. WARREN. I ask that the Chair may lay before the Senate the action of the House of Representatives on the amendments of the Senate to House bill 8233.

The PRESIDING OFFICER (Mr. WILLIS in the chair) laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 8233) making appropriations for the Executive Office and sundry independent executive bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1925, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. WARREN. I move that the Senate insist upon its amendments, accept the invitation of the House for a conference, and that the Presiding Officer appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WARREN, Mr. JONES of Washington, and Mr. OVERMAN conferees on the part of the Senate.

RESTRICTION OF IMMIGRATION

Mr. KING. Mr. President, I have before me a copy of this morning's issue of the Washington Post, an influential paper, which is said to be the organ of the administration. On the first page appears an article written by Albert W. Fox, one of the ablest newspaper men of the city. The article contains an inaccurate statement in connection with my position upon one of the provisions of the immigration bill, soon to be reported by the conference committee. Of course, Mr. Fox made the statement inadvertently and without knowledge of the facts. Speaking of the report of the conferees and the provision appearing in the conference report, he says:

> The outlook for a vote favorable to the proposition is none too bright. Senators KING and HARRIS, the Democratic conferees for the Senate, signed the conference report in order to get the bill out on the floor, but neither will vote for the proposition, which they opposed in committee.

Senators will perceive his reference to the Senator from Georgia [Mr. HARRIS] and myself. I shall not, of course, attempt to speak for the Senator from Georgia. He is quite able to represent himself and to state his own views. The article states that the Senator from Georgia and myself signed the conference report in order that the bill might be brought to the floor of the Senate. It is true that both Senators signed the conference report, but the statement is not correct, so far as I am concerned, and I feel sure that the same can be said of the Senator from Georgia, that the conference report was signed merely for the purpose of getting the bill out of conference and to the floor of the Senate.

The fact is that the conferees, after many days of earnest effort, came to an agreement, and all of the conferees of the Senate and, as I understand, all but one of the conferees of the House joined in the conference report. That does not mean that all of the conferees agreed upon all of the provisions of the bill. The conferees are agents, and when agreement has been reached upon the points in controversy they join in reporting the measure committeed to their hands back to their respective bodies.

Nor is the statement correct, "but neither will vote for the proposition, which they opposed in committee."

I can not speak for the Senator from Georgia, but it is not true that I opposed the provision dealing with reference to the Japanese matter in the committee, nor will I vote against it if it can be presented as a separate matter or proposition in the Senate.

Mr. President, I supported the House conferees in their amendment offered to the bill, which, in substance, extends the provisions of the bill so far as the Japanese are concerned until March 1 of next year. I did so knowingly and was influenced very largely by my knowledge of the wishes of the President of the United States. I understood that the President regarded this amendment as important and as helpful to the administration in its dealings and relations with the Japanese Government. I appreciate the problems which the Executive of our Government has to meet—problems which are made more intricate because of our important international standing and our extensive and expanding international relations.

I felt when President Wilson was Chief Executive that his political opponents sometimes sought to embarrass him in his dealings with foreign affairs. The President of the United States represents our Government and the American people in foreign matters. I have believed it to be the proper and the patriotic thing to uphold the hands of the Executive in foreign questions in so far as those policies were for the best interests of our country; and I have never believed that partisanship should determine the attitude of the American people, whether in official position or not, where questions involving our foreign relations were concerned.

Accordingly when a subject is presented by the Executive department dealing with the relations between our Government and other governments I shall, in so far as I can, support the President, whether he be a Democrat or a Republican. Of course, I am assuming that his course will be for the public good.

The President believed, as I understand, that the amendment referred to would be helpful to him in conducting foreign affairs. I was willing to accede to the wishes of the President in this matter, because I did not perceive any injurious consequences to our country or any results that would be at all harmful or inimical to the public weal.

With respect to the immigration bill, permit me to say that when it passed the Senate it contained provisions of which I did not approve, and on the final roll call I voted against it. The bill as it comes from the conference committee contains provisions that do not meet my approval. On the question of adopting the conference report I may feel constrained to vote against the bill. If I do, however, it will not be because of the provision tendered by the House conferees and embodied in the bill as reported from the conference committee. Notwithstanding the Senate bill contained provisions of which I did not approve in conference, I contended for the Senate bill, attempting to discharge as best I could the duty resting upon me as one of the conferees selected by the Senate.

Mr. NORRIS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Nebraska?

Mr. KING. I yield.

Mr. NORRIS. I wish to ask the Senator from Utah about another provision of the bill which we supposed was going to be cured in conference, if it needed curing. That provision was the one in reference to the seamen's act.

Mr. KING. Mr. President, if the Senator will pardon me, I will not trespass this morning on the time of the Senate. I should be glad to discuss that matter, and doubtless when the report comes before us the matter to which he has referred will receive consideration. I will say, however, that the conferees did not accept the amendment which I offered in the Senate dealing with seamen. The House provision with slight modifications was retained in the bill.

Mr. NORRIS. Would the Senator care to answer a question as to whether or not, in his judgment, as the bill now stands, the provision to which I have referred is workable; or whether, in effect, it repeals portions of the seamen's act?

Mr. KING. Mr. President, there was some testimony before the committee that supports the view that the House provisions of the bill are workable. There will, however, in my opinion, be many difficulties encountered and obstacles to its enforcement. I fear, however, that there will be evasions of the law and that there will come to our shores a considerable number of persons not eligible for citizenship and in contravention of the immigration laws.

It is contended by some that the House provisions referred to impinge upon the seamen's act. I have not been able to perceive how these provisions will repeal the seamen's act or any of its provisions. I regret that the amendment which I offered in the Senate was not accepted by the conferees, and that the conferees reported the provisions of the House bill dealing with seamen instead of the measure which I offered in the Senate dealing with this important matter. Of course, the Senate having rejected my amendment and the House having passed a bill containing provisions dealing with the subject generally the House conferees insisted upon the House provisions and the majority of the conferees accepted those provisions with some slight modifications.

Mr. HARRISON. Mr. President, may I ask the Senator a question before he takes his seat?

Mr. KING. I yield.

Mr. HARRISON. Will the Senator tell us about when the conference report will be submitted to the Senate?

Mr. KING. I presume under orderly procedure—and I am speaking rather without definite information—the report will first be presented to the other House, and considered there.

Mr. REED of Pennsylvania. If the Senator from Utah will permit me, I can answer that interrogatory.

The conference report will be presented to the other House to-day. It was not possible to complete it and complete the statement which, under the rules of the House, is required in time for presentation to that body last night. It will be presented there to-day, and, under the rules of the House, it will have to lie over for a day. It will be acted on in the House to-morrow at the earliest, and should reach us and will, I hope, reach us on Saturday.

Mr. HARRISON. So that the conference report will be printed in the RECORD of to-day's proceedings?

Mr. REED of Pennsylvania. It will be printed in the RECORD of to-day's proceedings.

Mr. ROBINSON. Then, it is not expected that the conference report on the immigration bill will be taken up by the Senate prior to Saturday?

Mr. REED of Pennsylvania. It can not, in any event, be here before Saturday.

Mr. ASHURST. Mr. President——

The PRESIDENT pro tempore. The Senator from Arizona.

Mr. KING. Will the Senator from Arizona permit me to retain the floor for a moment, to yield to the Senator from Tennessee [Mr. MCKELLAR], who desires to ask me a question?

Mr. ASHURST. Certainly.

Mr. MCKELLAR. Mr. President, I wish to ask a question. Does the report of the conference committee contain a provision holding the gentlemen's agreement between Japan and America?

Mr. KING. Exclusion provisions were contained in both the House and Senate bills, and it seems quite clear that if the provisions of either bill were enacted into law, it would ipso facto terminate the so-called "gentlemen's agreement." The Senator will recall that the House exclusion provisions did not go into effect until July 1 of this year, and the gentlemen's agreement would doubtless be operative, unless abrogated by the Executive, until that date. However, the amendment tendered by the House conferees, to which I have referred, extends the time until March 1 before the exclusion provisions go into effect.

Mr. REED of Pennsylvania. Mr. President, will the Senator yield to me?

Mr. KING. I yield.

Mr. REED of Pennsylvania. We have had a sufficient number of copies of the conference bill printed to be available for every Senator, and I will see that they are distributed within the next hour, so that all Senators may have an opportunity to read the bill itself and see what has been done.

But, to answer the Senator's question immediately, I will say, as the Senator from Utah has just stated, that the time for the exclusion clause to go into effect is fixed as the 1st of March next, and the President is requested to commence negotiations with the Japanese Government at once with a view to the immediate abrogation of the existing arrangement regarding immigration. Instead of ratifying any such gentlemen's

agreement, it requests the President to terminate whatever agreement there may be.

May I say further that under the quota provisions of the bill, which will be in effect until March 1, the maximum number of Japanese that can be admitted from July 1 to March 1 is 67.

Mr. DILL. Mr. President, do I understand that as the bill has been agreed to in conference it permits a quota basis for the Japanese?

Mr. REED of Pennsylvania. Yes; until March 1, 1925.

Mr. DILL. Although the Senate definitely voted down the idea of a quota basis?

Mr. McKELLAR. And the House took similar action.

Mr. DILL. Both Houses definitely voted against the quota basis, and yet the conference report provides for a quota.

Mr. ROBINSON. Mr. President, will the Senator yield to me?

Mr. REED of Pennsylvania. I yield.

The PRESIDENT pro tempore. Does the Senator from Utah yield the floor?

Mr. KING. I surrender the floor.

The PRESIDENT pro tempore. The Chair recognizes the Senator from Arizona.

Mr. ASHURST. I yield to the Senator from Arkansas.

Mr. ROBINSON. I thank the Senator from Arizona.

Mr. President, by the courtesy of the Senator from Pennsylvania the Senate is made familiar with the substance of the provision which has been incorporated by the conferees in the immigration bill. It would appear to be legislation by the conferees; but, passing over that question, it would seem to constitute a recognition of the immigration question as a proper subject for international negotiations; it would seem to be an abandonment of the position the Government of the United States heretofore has maintained that the question as to who shall be admitted into the United States is purely a domestic question.

I recall that the leader of the majority, the Senator from Massachusetts [Mr. LODGE], when the attention of the Senate was called to a communication from the Japanese ambassador recently, took the position that there could be no compromise upon that subject; that the United States has always maintained the position, which has been universally accepted by other nations, that questions pertaining to immigration are purely domestic questions which this Government can not afford to submit to negotiation. This provision would appear to repudiate that position and recognize the question of immigration as one appropriate for adjustment through treaty arrangement. It had just as well be understood now that the proposed amendment to the immigration bill, incorporated at the instance of the President, is one of very far-reaching importance. If we recognize the right of Japan to stipulate the conditions upon which Japanese can come into the United States we will be confronted immediately with the demand from other nations which have equal rights to the same recognition. Do Senators expect that Italy will continue to recognize immigration as purely a domestic question if we concede to Japan that it is a proper subject for international negotiation.

There is no desire, and there should be no desire, on the part of anyone to pursue a course which will work embarrassment to the Executive or occasion resentment on the part of any nation; but this is a question of overshadowing importance. Once you recognize the right of any foreign government or people to insist upon participating in determining the terms and conditions upon which their nationals may be admitted to the United States you abandon the position that immigration is a domestic question and you recognize that it is an international issue.

Mr. REED of Pennsylvania. Mr. President, will the Senator yield for a question?

Mr. ROBINSON. I yield with pleasure to the Senator from Pennsylvania.

Mr. REED of Pennsylvania. The conferees recognized the soundness of the principle which the Senator has just stated with his usual ability. We declined to put in a provision leaving this to Japan. If we had done so, I agree that the strictures would have been justified. What we have done has been to declare it a domestic question and to instruct the President, as far as it lay in our power to instruct him, to terminate the existing arrangement.

Mr. ROBINSON. Yes; you desire to terminate the gentlemen's agreement, but you asked the President to negotiate a treaty respecting the subject; and a recognition of the question of immigration as a proper subject for negotiation between nations, a recognition of the right of Japan to insist upon a treaty arrangement, is an abandonment of the doctrine that it is purely a domestic question.

Mr. REED of Pennsylvania. No, Mr. President; I think the Senator has in mind the provisions that were read into the RECORD by the Senator from Tennessee a day or two ago. Those provisions the conferees turned down, because we would not authorize a treaty on the subject of immigration.

Mr. ROBINSON. I have in mind the statement that I understood the Senator from Pennsylvania to make.

Mr. REED of Pennsylvania. Will the Senator permit me to put this in the RECORD, then, so that we may know exactly what it is?

Mr. ROBINSON. Yes; I yield for that purpose.

Mr. REED of Pennsylvania. I will not interrupt the Senator again.

Mr. ROBINSON. I do not object at all to being interrupted.

Mr. REED of Pennsylvania. The proviso is, following the exclusion clause:

> *Provided*, That this subdivision shall not take effect as to exclusion until March 1, 1925, before which time the President is requested to negotiate with the Japanese Government in relation to the abrogation of the present arrangement on this subject.

Whether he does or does not, however, exclusion takes effect March 1, 1925.

Mr. BORAH. Mr. President, may I ask the Senator a question?

Mr. ROBINSON. I yield to the Senator from Idaho.

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from Idaho?

Mr. ASHURST. I yield, Mr. President.

Mr. ROBINSON. I thank the Senator.

Mr. BORAH. But, fundamentally, do we not by the procedure which we have adopted recognize that a foreign government has a right to be heard when we come to legislate on the question of immigration? That is the fundamental question.

Mr. ROBINSON. Why, Mr. President, that is exactly what I am maintaining.

Mr. JOHNSON of California. Mr. President——

Mr. ROBINSON. Just a moment. This provision recognizes the question of immigration as appropriate for international negotiations. It is not so important what may come out of this particular case.

The important point that I am making is that we have always insisted that it is a matter of domestic concern, about which we have the right to legislate without regard to the views of other nations; and now we are surrendering that principle. The purpose of it, as everyone knows, is to give the President a chance to negotiate a treaty with Japan regulating the immigration of Japanese into the United States.

Mr. BORAH and Mr. LODGE rose.

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from Idaho or to the Senator from Massachusetts?

Mr. ASHURST. I yield, Mr. President.

Mr. ROBINSON. Just let me conclude in a moment. The principle involved is in no sense different because of the language employed. It is just as distinctly an abandonment of the doctrine that the immigration question must be maintained as a purely domestic issue as if we had incorporated in the provision a treaty arrangement with Japan.

Mr. BORAH. Mr. President, so far as I am interested in this question I should not want it to turn upon the question that 67 Japanese, more or less, may come into the country between now and the 1st of March. That is not a serious proposition at all, to my mind; but there are two propositions involved in it which, it seems to me, are very serious. The first is the one to which the Senator has referred—that we do by this procedure recognize the right of a foreign government to be heard when we propose to exclude certain people from our shores. Secondly, as I understand, now, for the first time, the conferees admit the quota principle with reference to Japan.

Mr. ROBINSON. Why, they go further than that. They recognize the gentlemen's agreement as a treaty obligation, and they refuse to recognize the right or the power of the Congress to legislate upon the subject until the so-called gentlemen's agreement has been abrogated or rescinded by a contract between this Government and Japan which they petition the President to negotiate. If that principle is to be adopted, it constitutes a distinct recognition of the force of the gentlemen's agreement as superior to the right of Congress to legislate upon the subject.

Mr. JOHNSON of California. Mr. President——

Mr. ROBINSON. The Senator from California wanted to ask me a question. I yield to him.

Mr. JOHNSON of California. I want to recall to the Senator the sequence chronologically of what has happened, and then he will see that what he has stated is entirely accurate, and that there is another principle involved in this as well.

The conferees of the House and the Senate met and agreed. They agreed upon exclusion, and accepted the date that was fixed in the House bill. They published it yesterday morning to the world. They were to meet at 3 o'clock in the afternoon, and then merely consummate what they had agreed upon. In the interim the President requested that the date be extended, and that the proviso be inserted; and after the agreement among the conferees, before the signature, they accepted the suggestion of the President; and at 3 o'clock, when they met for the purpose of consummating their agreement, they wrote into the bill a new provision.

I think I am accurate in stating that; am I not, sir?

Mr. REED of Pennsylvania. That is accurate.

Mr. JOHNSON of California. Now, there are two questions presented here, as I would call to the attention of the Senator from Arkansas: First, the great, fundamental question that we recognize the right of Japan to negotiate by treaty with the United States of America in regard to immigration, a right that we recognize in no other country on the face of the earth; secondly, the right of the Congress of the United States to determine a question within its jurisdiction, and the right of conferees to determine it when at variance with the way that Congress has determined that particular question.

One thing more: I did not intend to discuss this question until the conference report came before the Senate, and I shall not discuss it in detail now; but do not be misled by the statement that is made, with the best of intentions, of course, by the Senator from Pennsylvania that this thing affects 103 or 147 or 180 Japanese, as the case may be. I quite agree with the Senator from Idaho [Mr. BORAH] that that is immaterial in the principle that is involved; but the fact that what this amendment means is stated authoritatively by Mr. V. S. McClatchy in this morning's publications. Mr. McClatchy represents every element in the State of California that is engaged in endeavoring to promote Japanese exclusion. Among others, he represents here to-day officially the American Legion, the State Federation of Labor, the State Grange, the Native Sons, and the various leagues that have been formed in California upon exclusion.

Mr. McClatchy says that the object of this amendment is to increase the number of Japanese in California by 240,000 rather than 137, and if the number became material I could recall to you, from the statement made by Mr. McClatchy, that 2,000 Japanese are to-day in Japan seeking kankodan brides, as they are termed; that they are there under the protection and with the permission of the Japanese Government; and that between now and next March there will be 40,000 Japanese bachelors now resident in the State of California doing exactly the same thing. Under the statistics it has been demonstrated that each one of these families raises 5 children, and Mr. McClatchy reaches the figure that he suggests of 240,000 in that fashion.

So, first, you have presented the basic principle that you are going to deal with Japan in a fashion that you deal with no other country on the face of the earth. Secondly, you are presented with the idea that you are taking a date that is at variance with the time that was fixed by the Senate and the time that was fixed by the House; and your conferees, upon the command of the executive part of the Government, are legislating both for the House and for the Senate upon this subject. Thirdly, at the instance of Japan you are fixing a date in the future that means an increase of Japanese in the State of California not of 137, but possibly of a couple of hundred thousand, under the facts as stated by Mr. McClatchy.

Mr. REED of Pennsylvania. Mr. President, may I simply add one sentence to that?

The PRESIDENT pro tempore. Does the Senator from Arizona yield, and to whom?

Mr. ASHURST. I yield further.

Mr. REED of Pennsylvania. The census of 1920 shows that in the whole United States there are only 111,000 Japanese. Senators can estimate for themselves the likelihood of this prophesy coming true, even if there were no quota agreement.

Mr. ROBINSON. Mr. President, I shall conclude my suggestions upon this subject in a moment.

I do not intend at this time to enter into a discussion as to the probable extent or effect of Japanese immigration. I am speaking now of the principle involved in this legislation, which appears to me to be of very far-reaching importance.

Both Houses of Congress passed by an almost unanimous vote, and this body passed it after the subject had been made by Japan a direct issue, an exclusion provision affecting Japan. This provision, adopted in the conference, is that exclusion shall not take effect—

until March 1, 1925, before which time the President is requested to negotiate with the Japanese Government in relation to the abrogation of the present arrangement on this subject.

Mr. President, some Senators have recently expressed in this Chamber severe criticism of the policy of requesting the President to take action within spheres exclusively within his jurisdiction. I can recall when some Senators who favor this provision thought it was belittling to the dignity of the Senate, and a gross violation of propriety, for the Senate to suggest to the President a course exclusively within his sphere; yet there is no Senator so ignorant as to think that the negotiation of a treaty is not exclusively an Executive function. The Senate does not negotiate treaties. It has a function to perform, as everyone knows, in connection with treaties, but no duty relating to negotiating treaties. Here, however, we are asking the President to negotiate a treaty before exclusion shall take effect.

Mr. REED of Missouri. Mr. President——

The PRESIDENT pro tempore. Does the Senator yield?

Mr. ROBINSON. I yield to the Senator.

Mr. REED of Missouri. Will my friend permit me to correct him?

Mr. ROBINSON. Certainly.

Mr. REED of Missouri. He seldom makes mistakes, but here the President, through his servants, agents, and I will not say employees—his friends—is asking the Senate to ask him to take this step.

Mr. ROBINSON. And the Senators who expressed recently such serious objection to interfering with the Executive prerogative are glad to comply with the President's request. In other words, they are willing to trespass upon the jurisdiction of the President whenever it suits them to do so, but they regard it as a crime when they oppose the policy in the particular instance presented.

But that is not of controlling importance. The important thing is that this legislation recognizes the subject of immigration as proper to be determined by treaty. You have asked the President to negotiate a treaty with Japan abrogating the gentlemen's agreement. Suppose Japan refuses to enter into such a treaty, or suppose the President changes his policy and refuses to act upon your suggestion? Three or four days ago he announced that he was for absolute exclusion, and that opinion prevailed until the California primary had happened, and instantly after the California primary we find him forcing into the Senate—for that is what happened—a provision postponing exclusion until March 1, 1925, and requesting him to negotiate a treaty with Japan respecting Japanese immigration into the United States.

If you recognize that principle as applicable to Japan, you can not, without offense, contend for a contrary principle with other nations interested in their nationals coming to the United States, and there is no reason why you should do it. If you are going to negotiate immigration treaties with Japan, you ought to negotiate them with nations whose nationals are of the white race. There is no reason in morals or in justice why Japan should receive preferential treatment.

You may say that it is not a very important matter to make immigration an international issue, but how jealous some of you have been on this subject! I remember with what unanimity and wrath a few days ago, led by the Senator from Massachusetts, Senators on the other side of the Chamber refused to tolerate for a moment a suggestion that Japan should be consulted in connection with this subject, and now they come with a proposal to recognize the right of Japan to participate in determining who shall be admitted to the United States. If we adopt that, you abandon the position that immigration is a domestic question.

Mr. HARRIS. Will the Senator from Arizona yield?

Mr. ASHURST. Of course, I feel I should, but I have kept the floor for 40 minutes and have not said a word.

Mr. HARRIS. I would like to make a statement as to my attitude on this question.

Mr. ASHURST. I will yield to the Senator in a moment. Let me at least see how my voice sounds on this question. I do not feel that I have displayed any impatience in yielding. In fact, I think what has been said by other Senators was probably better said than I would have said it, but that does not relieve me from the urge I feel to talk at this time.

Mr. LODGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from Massachusetts?

Mr. ASHURST. I yield to the Senator from Massachusetts for a short statement, although I declined to yield to the Senator from Georgia.

Mr. LODGE. If the Senator declined to yield to the Senator from Georgia, I will wait.

Mr. ASHURST. I yield to the Senator from Massachusetts at this juncture.

Mr. LODGE. Mr. President, I think I ought to say a word about this matter. I have taken very strong ground always in regard to the question of immigration. It is a subject on which I have worked ever since I began my career in the House of Representatives, and I have always believed that the question of who should be admitted to the United States was a matter to be determined by the Congress of the United States. It is only fair to say that that has not been the uniform practice of the United States.

We have treaties with China, as well as laws stretching back to 1862 and running down to 1902, which include exclusion laws, and we also have treaties on immigration. I do not say that because I believe in that policy, because I do not; I believe it was a mistaken policy to make treaties on that subject; but they were made. So far as I am concerned, I declared my views on it the other day, to which the Senator from Arkansas has referred. I felt very strongly about it, and declared my views very strongly at the time of the discussion of the League of Nations as one of the subjects of all others on which no foreign power could have anything to say.

I was on the conference which put in the gentlemen's agreement, which went into a bill. It was the action of the two Houses. I think it was probably new legislation; but at all events it went through, and it went through as part of the conference report on an immigration bill. It conferred certain powers upon the President and that was all. It was a purely legislative act. It has no treaty claim whatever; there was nothing neutral about it. It is something that could be abolished at any moment by the power that made it. We made it, and we can abolish it at any moment.

Under those circumstances it would be simple hypocrisy for me to try to argue in favor of settling this question with the Japanese or any other nation on the face of the earth except by law. I do not mean that we can not by a treaty arrange in regard to the admission of representatives like ambassadors or ministers, or as to clergymen or teachers being admitted, or certain members of any special classes which would, without such exceptions, come perhaps in violation of the contract labor laws. That has been done by treaty, and I suppose will be done again, but I am speaking of the general proposition as to who shall have the power to declare who shall come into the United States to become a citizen of the United States. In my judgment, only the Congress of the United States, and, of course, acting with Congress, the President of the United States has that power—that is, the entire legislative body of the United States must say to the rest of the world, "We alone have the power to say who shall come into the United States as immigrants."

I repeat what I said the other day, from that decision so made there is no appeal. I have the utmost respect and admiration for the President. I believe in him thoroughly, but I venture to think that this brief amendment goes further than was perhaps realized by the conference committee.

Mr. ASHURST. Mr. President, the remark of the senior Senator from Arkansas [Mr. ROBINSON] was appropriate when he said that no one here should desire on this important subject to speak merely to embarrass the Executive. In the short time I may occupy the floor I shall say nothing that will embarrass the Executive. Indeed, it would be a wanton act on the part of a Senator who would now attempt to embarrass the Executive, because the Executive has already been sufficiently embarrassed on this question by his own Secretary of State. It is not the Senate nor the House of Representatives that has embarrassed the Executive; it is his own Cabinet minister who, according to the press, petulantly threatens to resign his portfolio if he is not allowed to have his own way in the matter of inducing our conferees to inject into a conference report "matter" which both Houses of Congress have rejected.

After this dubious performance let there be no more lamentations here or elsewhere about the alleged Executive interference of former Presidents in legislative affairs. Had the interference of the Executive on this subject occurred prior to last Tuesday, that interference would have been at least courageous. This Executive interference, coming as it did after last Tuesday, marked it as the interference of a man more cautious than courageous.

The report of the conferees is baleful for two reasons: First, because the conferees have inserted into their report "matter" which distinctly and emphatically had been rejected by both Houses of Congress, and secondly, the matter they inserted was inserted at the instance and request of the executive branch of the Government and it was in regard to a matter and subject upon which foreign nations have no right to complain or interfere. It was and is purely, simply, and solely a domestic question, and has ever been treated as a domestic question.

Happily, however, we are not without recourse. Under the second paragraph of Rule XXVII, called the Curtis rule, it is provided that whenever conferees shall insert into their report matter not committed to them by either House, or matter rejected by both Houses, a point of order will lie, and that the whole report must go back to conference.

According to press reports the junior Senator from California [Mr. SHORTRIDGE], or his colleague, the senior Senator [Mr. JOHNSON], will make the point of order, and thus these Senate conferees who have offended this Senate rule will be sent back to perform their duties properly.

I have been a conferee myself in times gone by, and I appreciate the ever-present anxiety of conferees to reach an agreement. Yet on this particular conduct of Senate conferees, if I were disposed to be critical, I could say much against the impropriety of their inserting into a conference report matter so directly, so plainly, and so overwhelmingly rejected by both Houses.

Moreover, I could animadvert to the vice of conferees yielding to the threats of a Secretary of State; but, as has been said, that would be——

Mr. REED of Pennsylvania. Will the Senator explain what he means by the "threats" of the Secretary of State? I have not heard any threats from any Secretary of State on this.

Mr. ASHURST. The Senator signed this conference report. Did the Secretary of State request him to do so?

Mr. REED of Pennsylvania. The Secretary of State did not. He has not communicated with me.

Mr. ASHURST. Did any member of the executive arm of the Government make it manifest to the Senator that the Executive wanted him to sign this report or to include therein the provisions so offensive to the Senate?

Mr. REED of Pennsylvania. Mr. President——

Mr. ASHURST. I will withdraw my question.

Mr. REED of Pennsylvania. I am perfectly willing to answer it. The President of the United States asked the House conferees to offer this proviso. They did offer it, and after discussion we accepted it.

Mr. ASHURST. It would be offensive if I were to try to catechize the conferees as to what moved them. The results speak for themselves, and it is against the results that I direct my remarks.

The figures supplied by the senior Senator from California [Mr JOHNSON], so far as I am aware, are correct. But even if the figures he supplied be incorrect, even if it be ascertained that only 240 instead of 240,000 Japanese would be admitted, under this conference report the vice of our Senate conferees would be just as offensive, because it breaks down a principle to which we have ever adhered and which we have never surrendered; that is to say, the matter of determining who may and who may not be admitted into the United States as an immigrant is simply, solely, and only a domestic question to be reserved for the legislative branch, and there is no exception to this rule of government.

Now, as the Senator from Arkansas said, we propose to select a yellow race, an oriental power, and to single it out for special favors and privileges, as separate and apart from the treatment we accord to the white races. We require, and justly require, England, from which land we have largely drawn our language and our customs, to submit to our laws on this subject. Germany, France, Spain, Italy, and other foreign powers are required to submit, and properly submit, to our laws and judgment on this subject because it is an internal question, a domestic question. But by reason of some mental strabismus on the part of the Secretary of State which I am unable to comprehend we find inserted here a preference right, not to one of the branches of the white race but preference to a yellow race.

I am of opinion that in some parts of our country people do not realize the harm that will inevitably flow from an oriental invasion, although it be done by peaceful penetration. The orientals worship their gods, develop their culture, and it suits them. Against their manners of life, their

habits and customs, I have no unkind word. It would not be proper for me to stand in this forum and criticize or object to what they do at home, within their own walls. I will go no further. I will say only that we are different. We can not adopt their culture; they do not want ours; and when we begin to say that we will treat the matter of the admission of orientals or the nationals of any other nation as an international or a foreign question, instead of a domestic question, we tread upon dangerous ground.

If the Senate conferees who have yielded upon this question and who thus have either willfully defied the Senate or have been ignorant as to the Senate's views would for a short time live upon the long line which we call the Mexican border, stretching from the Pacific Ocean down to the mouth of the Rio Grande, they would perceive the danger of peaceful penetration which Japan practices upon the United States.

It has been a part of the policy of certain Japanese for years to penetrate the United States across that border. Here is a dispatch signed by Duke N. Parry, of the International Service, reading as follows:

IMMIGRATION BAN STIRS JAPAN—INCREASED EXODUS TO SOUTH AMERICA IS PLANNED AS COUNTER MOVE

TOKYO, April 24.—Completely recovered from the serious illness which a few weeks ago caused reports of his death, Prince Matsukata, aged genro, arranged to-day to motor to Tokyo to discuss with the prince regent and Prince Saionji the immigration crisis.

The eta class meeting at Kyoto to-day planned a three-day protest against the Japanese exclusion measure, which will be nation-wide. Speakers accused the Government of "weak diplomacy" in its protests to the United States, until more than a thousand Japanese, graduates of 21 American colleges, to-day sent protests to Secretary Hughes and their alma maters.

The Japanese Nationalists are apparently behind the agitation manifested daily in minor outbreaks. They represent a distinct group and include many members in the army and among the older statesmen.

Here is what they say:

We propose to increase our immigration to South America and Mexico, its leaders declare, thus peacefully penetrating the territory over which the Monroe doctrine had applied hitherto. We do not accept the Monroe doctrine, and we claim the Japanese could have managed the American Continent as well as the Caucasians had the Japanese awakened sooner as a member of the family of nations.

Its influence was evidenced to-day in the Overseas Immigration Society voting to increase immigration to South America.

So I have no doubt that at the appropriate time a point of order will be made against the conference report, because the conferees have inserted into their report matter distinctly rejected by both Houses of Congress with an emphasis and a unanimity rarely observed on a controverted question in either House.

The able junior Senator from Utah [Mr. KING] made a clear, fair explanation of his views. I can only remark that he is at least consistent. He believes the Japanese should be permitted to enter the United States. He has been honest and frank about it, but I would have had a more generous feeling toward the Senator this morning if when he went into the conference he would have discarded his own views and would have acted as the faithful agent of the Senate on this subject rather than putting his own views into the conference report. Conferees are not at liberty to inject their own views into a conference report. They must act upon such "matter" as is committed to them.

Mr. HARRIS. Mr. President, I have taken more interest in the immigration question than in any other question since I have been a Member of the Senate. My views as expressed in my votes and speeches in the committee and in the Senate have been more extreme in demanding restrictive immigration than those of any other Senator. Those views I have also expressed in bills which I have introduced. I introduced five years ago a bill to prevent all immigration for five years. I have introduced similar bills twice since that time. During the present session of Congress I introduced such an amendment to this bill and voted for it and urged it as strongly as I could.

The Senator from Utah [Mr. KING] has stated his position and I shall not criticize that. I will only state my position in the committee, on the floor of the Senate, and in conference has been entirely different from him on this question. I have opposed immigration of all kinds at least for five years. To show how extreme I was, I will say that in conference I was the only one who voted on extreme measures trying to prevent all immigration at that time. I shall not state how other members of the conference voted on any question.

The matter relating to change of Japanese exclusion clause came up from the President, who was very much interested in the question. There has been no partisanship in the conference. We have worked as hard as we could and have avoided anything like partisanship. I have never seen members work harder or more unselfishly for what was best for our country. The President insisted on the provision which Senator MCKELLAR placed in the RECORD yesterday being incorporated in the conference report. I opposed it as strongly as I could and the Senator from Pennsylvania, when the conferees' report comes before the Senate, will state that I opposed the President's views every time the Japanese exclusion question came up, but have not done so in a partisan way so as to try to embarrass the President. I am as strongly in favor of Japanese exclusion as any Member of the Senate, and have every time so voted consistently. I was not present yesterday when the conferees voted on the final adoption of the report because I was attending a meeting of the Appropriations Committee as one of the members of the subcommittee having in charge the Agricultural Department appropriation bill. But the Senator from Pennsylvania and every one of the conferees knew that I opposed this part of the report.

When the matter first came up in conference I stated frankly that I thought the President was making a great mistake; that I did not wish to embarrass him, but that the Senate would never, in my opinion, vote in favor of anything of the kind suggested by the President in regard to changing the Senate and House provisions relative to Japanese exclusion.

I told the conferees that I did not believe half a dozen Members would be in favor of the change and that I did not believe it would do any good to make the attempt. I thought it would strain our relations with Japan to have heated discussion of the question on the floor of the Senate and in the House, and I believed that it was a great mistake and strongly urged this view on the conferees.

At my suggestion the conferees polled the Senate and the House on the question. I insisted that if we would poll the two bodies, the President would find there was no sentiment for the provision, but that they would nearly all be against it. It was at my suggestion the poll was made and the President was notified of the result. The Senator from Tennessee [Mr. MCKELLAR] at my suggestion polled the Democratic Senators as far as he could, I believe 18 in number. Every one of them he found opposed to the measure, just as I am. I will not state what the other members of the committee reported to the conference. That is their responsibility and not mine. I am only relating the things which were done partly on my suggestion. I was with the Appropriations Committee and not present when the conference report was signed by all the others. Senator REED, the chairman, brought it to me. I opposed vigorously the particular provision under discussion as well as some of the other provisions of the act, yet I was so strongly in favor of immigration legislation, I think it is the most important legislation that has come before the Congress in years, that I did not wish to run any risk of having the President veto the bill. He was insisting that the Senate and the House should vote on this Japanese provision. I thought by getting the bill to the floor of the Senate and the House, the Senate would without doubt vote down the Japanese provision. I believe it is subject to a point of order, and leading parliamentarians take this view. I do not believe the conferees had any right to change what the House and Senate had already voted in regard to the Japanese question. I had opposed it strongly every time the matter came up, and when I signed the report I wrote on it as follows, "I do not agree to the insertion of the proviso at the end of subdivision (c) of section 13." This section contains the proviso regarding the Japanese which the President insisted should be voted upon. I do not want the President to veto the bill, and I was afraid he might if we were not given a chance to vote directly on the question, and thereby destroy any hope of this legislation this session.

I want immigration legislation. I believe it more important than anything before the Congress. Congress will be in session only a few days more, and if the President were to veto the bill at this time I am afraid we would not get the legislation through this session. For that reason I did not want to take any chances on it. I wanted to get a full vote on it in the Senate. I am convinced the proposition suggested by the President would be voted down by both Houses, and when this was done we would pass the measure, then we would have an immigration bill satisfactory to both Houses and to the country and which the President would not have the same reason for vetoing. For that reason I signed the conference report with a dissenting report relative to the Japanese proviso in the bill which the President recommended and the conferees inserted over my protest. The Senator from Pennsylvania [Mr. REED],

the chairman of the conferees, Mr. JOHNSON, the chairman of the House committee, and each member of the conferees have worked unceasingly for days and weeks at their work, which I feel sure will be adopted by the Congress, with the exception of the Japanese proviso, and I believe this measure will do more for the future of our country than any other legislation passed since I have been a Member of this body.

Mr. REED of Pennsylvania. Mr. President, I hope that the discussion of this matter may be delayed until it is properly relevant to the business before the Senate. The conference report will be here on Saturday, I think, if the other House approves it, and it seems to me that discussion might well wait until that time.

Mr. HARRIS. I had not intended to discuss the matter.

Mr. REED of Pennsylvania. I did not mean to criticize the Senator.

Mr. HARRIS. I understand that, but while the Senator from Pennsylvania is on the floor, and as he was going to make a statement as to my position, just as I have stated it here when he presented the conference report, I hope he will now make a short statement as to my views, and setting forth that I did oppose this provision.

Mr. REED of Pennsylvania. Mr. President, I wish to say, so far as that goes, that the Senator from Georgia has stated with complete exactness the attitude that he observed before the committee. I wish to emphasize, Mr. President, that throughout the conference there has not been the slightest tinge of partisanship observable within the conference committee—not a particle. Every member of that committee has treated this as a question that was above partisanship, because it relates to the future of the United States, and it will affect the United States and mold the United States long after all the parties that we know anything about shall have passed and gone. It is the most important legislation, I am sure, as the Senator from Georgia has said, before this Congress, and the most important that has been here for many years.

I wish to say that both the Senator from Georgia [Mr. HARRIS] and the Senator from Utah [Mr. KING] have stood faithfully in the attitude of not desiring to embarrass the President in any way. They took the position that he was their President, regardless of any party difference, and that in any dealing with foreign countries there were no parties in the United States, and that he spoke for all, and those Senators preserved that position with consistency throughout.

Now, just a word in reply to what the Senator from Arizona [Mr. ASHURST] has said about this being a matter for the exclusive action of Congress. I agree that this is a domestic question which Congress alone has power to decide, and from its decision there is no appeal. I agree with that; but, Mr. President, back in 1907 the "gentlemen's agreement" was made; it was recognized by Congress, for in the immigration law of that year the conferees put in a proviso which recognized the "gentlemen's agreement." A point of order was made against it here, but it was held to be in order because the conferees were dealing with a bill that had been amended by a complete substitute and the conferees themselves wrote a complete substitute bill.

The then Vice President held that it was in order for the conferees to put in a proviso relating to the "gentlemen's agreement," although neither House had done so on the original passage of the legislation. Then the measure went to the House of Representatives; the same point of order was raised there, and Speaker Cannon, one of the ablest parliamentarians who has presided over the House for many years, sustained the action of the conferees and overruled the point of order. So in both Houses the exact action of the conferees in this case has been sustained on a point of order made to an immigration bill with a proviso relating to the "gentlemen's agreement." Therefore, it is not in any sense an open and shut question on the point of order.

Mr. NEELY. Mr. President, will the Senator from Pennsylvania yield to me?

Mr. REED of Pennsylvania. I yield.

Mr. NEELY. The Senator, of course, realizes that in 1907 the so-called Curtis rule had not been adopted by the Senate, does he not?

Mr. REED of Pennsylvania. I quite realize that, but I do not think the Curtis rule changes the situation at all where the amendment of the Senate is a complete substitute for the whole House bill, and the action of the conferees is a complete redrafting of the entire legislation. That, however, will have to be decided later.

Just a further word as to the suggestion that the "gentlemen's agreement" must not be recognized by Congress. What we propose to do in this case is to establish a rule of law that will terminate the "gentlemen's agreement." We request the President to do so in the meanwhile, pleasantly if he can; but whether he does or does not, the decision of Congress takes effect and the "gentlemen's agreement" dies on March 1 next.

Mr. SHORTRIDGE. Mr. President, will the Senator from Pennsylvania yield merely for a question?

Mr. REED of Pennsylvania. I yield.

Mr. SHORTRIDGE. I understand it is the desire of the Senator, as expressed, that time be given to negotiate for the abrogation of this alleged existing agreement?

Mr. REED of Pennsylvania. Precisely.

Mr. SHORTRIDGE. Will there not be ample time between now and July 1? Why continue it for six months?

Mr. REED of Pennsylvania. The President seemed to think that he needed more time. His attitude has been plainly expressed repeatedly, and there is nothing in the proviso inconsistent with it. The President favors the exclusion clause which Congress has adopted; he favors exclusion; but he wants time to accomplish, by pleasant diplomatic means, the sending of that message to our friends across the Pacific.

In 1907, as I have said, we recognized the "gentlemen's agreement." This Congress, which has suddenly become hypersensitive on the subject of its powers, recognized the "gentlemen's agreement," in the Dillingham immigration bill of that year. We again recognized it in the quota law of 1921, where we excepted from the quota law, and took the entire restriction off all nations with which we had agreements relating solely to immigration. We recognized it then because that agreement was in force. It was also recognized on the floors of both Houses of Congress that the exception was put in for the particular benefit of Japan. So it ill behooves us now to get excited because Congress recognizes the existence of the "gentlemen's agreement" in directing that it be terminated. The Roosevelt administration, the Taft administration——

Mr. JOHNSON of California. Mr. President, will the Senator yield?

Mr. REED of Pennsylvania. I will yield at the end of the sentence—the Wilson administration for two terms, and the administration of President Harding all recognized that "gentlemen's agreement," and nobody thought that the honor and the dignity of the Congress or of the United States were impaired. Now I yield to the Senator.

Mr. JOHNSON of California. But in the recent immigration bill the Congress terminated that agreement, did it not?

Mr. REED of Pennsylvania. In the recent immigration bill Congress adopted a definite exclusion clause, yes.

Mr. JOHNSON of California. And we definitely voted upon the "gentlemen's agreement," did we not?

Mr. REED of Pennsylvania. We definitely voted to leave out of the bill the provisions of the bill of 1921.

Mr. JOHNSON of California. Exactly.

Mr. REED of Pennsylvania. And they have not been restored.

Mr. JOHNSON of California. No; but recognition is contained in the proviso.

Mr. REED of Pennsylvania. Recognition that such an agreement has existed is contained in the proviso.

Mr. JOHNSON of California. And the proviso reads that the President shall negotiate "in relation to the abrogation." Will the Senator tell me what is meant by "in relation to the abrogation"?

Mr. REED of Pennsylvania. I presume that means that the President shall negotiate about the abrogation of the agreement.

Mr. JOHNSON of California. Does it mean that the President shall negotiate to abrogate it?

Mr. REED of Pennsylvania. I think it does.

Mr. JOHNSON of California. Why does it not say so?

Mr. REED of Pennsylvania. I did not write it. If I had been writing it I would have said so.

Mr. JOHNSON of California. I think if the Senator had been writing it he would have written it very differently if he had meant to abrogate the agreement. But the other amendment that was suggested by the President was of a different sort, was it not?

Mr. REED of Pennsylvania. That was of a different sort, and the conferees turned it down.

Mr. JOHNSON of California. And they turned it down definitely and conclusively and finally, did they not?

Mr. REED of Pennsylvania. Yes.

Mr. JOHNSON of California. So then, subsequently, the other provision was presented; but the first amendment that was presented did not in reality exclude; while agreeing to

exclusion, it left it to an uncertain and indefinite future, did it not?

Mr. REED of Pennsylvania. Precisely, and that is one reason why we turned it down.

Mr. JOHNSON of California. The President presented the first one, did he not?

Mr. REED of Pennsylvania. He did.

Mr. JOHNSON of California. So that, if he were in favor of exclusion, he presented an amendment that denied it.

Mr. REED of Pennsylvania. No; not at all.

Mr. JOHNSON of California. It was an amendment that left it, as the Senator just stated, to an uncertain and indefinite future.

Mr. REED of Pennsylvania. The President has been in favor of exclusion all the time, but he wanted to accomplish it by gentler methods than those that Congress had employed.

Mr. JOHNSON of California. But the Senator just stated to me that the amendment the President first presented left it to an indefinite and uncertain future.

Mr. REED of Pennsylvania. It did; but the President said also, in connection with that, that he meant to negotiate a treaty of exclusion.

Mr. JOHNSON of California. But the proviso would have left exclusion uncertain.

Mr. REED of Pennsylvania. Yes; and that is why we rejected it. The provision adopted does not leave it uncertain.

Mr. JOHNSON of California. Then the Senator and the committee rejected it because they did not think that it gave us exclusion.

Mr. REED of Pennsylvania. I wanted to have exclusion beyond a shadow of a doubt.

Mr. JOHNSON of California. Correct; and because the Senator wanted exclusion he rejected the first amendment presented.

Mr. REED of Pennsylvania. Precisely.

Mr. JOHNSON of California. Yes, sir.

Mr. REED of Pennsylvania. There never was any question of the President's intention to negotiate a treaty of exclusion; that was plain.

Mr. JOHNSON of California. Well, the amendment speaks for itself in that regard, of course.

Mr. REED of Pennsylvania. Of course it does. The original proposition gave him full authority to negotiate a treaty for exclusion.

Mr. JOHNSON of California. But it postponed exclusion until 1926 and made it contingent in reality upon the execution of a treaty.

Mr. REED of Pennsylvania. It postponed exclusion until 1926 and provided that if a treaty were negotiated in the meantime the treaty should control.

Mr. JOHNSON of California. And its terms provided for restricted immigration, did they not?

Mr. REED of Pennsylvania. For a restriction of immigration—that was the language used.

Mr. JOHNSON of California. It did not provide for exclusion but for restricted immigration.

Mr. REED of Pennsylvania. But the President's intention was perfectly plain. He meant to negotiate a treaty like the Chinese treaty.

Mr. JOHNSON of California. I am not questioning the intention in the slightest degree; I am speaking of the words that were used in the amendment that was first presented.

Mr. REED of Pennsylvania. Precisely, and the conferees did not feel sufficiently assured. We realized that the President was mortal; that the intentions of the next President might be different from those of the present President, and that treaties can be modified by future treaties, and we wanted to make it certain that exclusion should go into effect and should be conclusive.

Mr. STERLING. Mr. President——

Mr. REED of Pennsylvania. I yield to the Senator from South Dakota.

Mr. STERLING. May I ask the Senator whether or not under the first proposition there would have been absolute exclusion after March, 1926, whether any treaty had been made or not?

Mr. REED of Pennsylvania. Absolutely.

Mr. JOHNSON of California. Pardon me, but I did not hear the suggestion of the Senator from South Dakota.

Mr. STERLING. The suggestion was that under the first proposition submitted by the President, whether any treaty had been negotiated with Japan or not, there would have been absolute exclusion after the 1st of March, 1926.

Mr. JOHNSON of California. Provided a treaty were not concluded for restricted immigration before that time. That is exactly the language.

Mr. REED of Pennsylvania. That is correct. If there had been a treaty for restriction or exclusion made before that time, and if it had been confirmed by the Senate, that would control.

Mr. PITTMAN. Mr. President——

Mr. REED of Pennsylvania. Will not the Senator let me finish? I do not wish to make this debate too long.

Mr. PITTMAN. I am not going to make a speech; I merely wish to say that it is perfectly evident from that provision that it was desired to secure time in order to conclude a treaty of restriction rather than of exclusion.

Mr. REED of Pennsylvania. The Senator has been misled by the fact that the provision about which the senior Senator from California asked me was a provision which the conferees declined to embody in the bill.

Mr. PITTMAN. That is true.

Mr. REED of Pennsylvania. That never went in the bill. The provision which has been embodied in the bill contemplates nothing but exclusion; there can be nothing else under it.

Mr. PITTMAN. I was calling attention to the intention of the present President. The Senator from Pennsylvania was uneasy about the intention or desires of some future President, and I say that the proposal which he handed to the conference committee indicates that instead of being for exclusion he is for restriction.

Mr. REED of Pennsylvania. It may indicate that to the Senator but it did not indicate it to me.

Now, finally, Mr. President, about the motives of the President in asking for this modification. It is a matter of lively concern to all the Christian people of the United States, I think, that Christianity should be spread in foreign lands which at present embrace other religions. We have hundreds of missionaries scattered all over Japan. They have done a fine work in the last half century; but the people who are backing them up, the good Christian people of this country who send them out and support them there, are all of them concerned at the roughshod way in which Congress has established its decision here. I take my share of blame for that, because it was I who offered the exclusion section after the receipt of the Hanihara letter, and I thought we owed it to the dignity of the United States to offer that exclusion section, and I voted for it, and I would do so again; but since that has happened full apology has been made for the unfortunate expressions in the Hanihara letter. It is perfectly obvious that exclusion can be accomplished pleasantly as well as unpleasantly. It is perfectly obvious that exclusion is going to be accomplished in one way or the other; but the President is anxious, I know, from what he has said to us, to do it in such a way as shall not make the task of those missionaries in Japan any harder, as shall not create unnecessary friction for them, and shall not make our foreign relations any more difficult. I believe that it is incumbent on us here to follow the position so splendidly taken by the Senator from Utah and stand by this President, because he is our President, whether we are Democrats or Republicans or hybrids.

Mr. SHORTRIDGE obtained the floor.

Mr. KING. Mr. President, will the Senator yield to me to make just one statement?

Mr. SHORTRIDGE. I yield.

Mr. KING. The Senator from Arizona, of course inadvertently, stated my position with respect to exclusion. I have never stated that I was not for exclusion, and in attributing to me that position he is in error. I did take the position that the "gentlemen's agreement" having been negotiated, having been accepted even by Congress itself, the President of the United States ought to have opportunity to abrogate the same and, by diplomacy, to take such steps as might be deemed necessary and proper for the purpose of removing that as an impediment to the enforcement of the will of Congress. I believe that Congress has the absolute right, because it is a domestic question, to deal with immigration, and I assent to all that has been said by Senators in regard to that matter; but I did not want the statement of the Senator from Arizona to go into the RECORD unchallenged that I was in favor of Japanese immigration, because I am not.

Mr. BURSUM. Mr. President, will the Senator from California yield to me for just a moment?

The PRESIDENT pro tempore. Does the Senator from California yield to the Senator from New Mexico?

Mr. SHORTRIDGE. I yield.

INCREASE OF PENSIONS—VETO MESSAGE

Mr. BURSUM. Mr. President, I am anxious to bring up Senate bill 5 for a vote; and I should like to ask the chairman of the Finance Committee if it would be agreeable to him to lay aside the tax bill to-morrow at 12 o'clock?

Mr. SMOOT. Yes, Mr. President; at that time I shall ask unanimous consent to lay aside the unfinished business, if it is not passed before the close of the session to-day, for the consideration of the veto message of the President on Senate bill 5.

Mr. KING. Mr. President, I will say to my colleague that some Members of the Senate, at least one, are more anxious to secure a reduction of taxation than an imposition of additional tax burdens upon the people; and when to-morrow comes, if the chairman of the committee asks unanimous consent to lay aside a measure that ought to relieve the people of hundreds of millions of dollars annually and to take up a measure that will impose from fifty-five to seventy-five millions of dollars of additional taxes upon the people, there may be some objection.

Mr. BURSUM. Mr. President, then I give notice that I shall move for the consideration of Senate bill 5 to-morrow at 12 o'clock.

Mr. DIAL. Mr. President, I should like to say to my friends the Senator from Utah [Mr. KING] and the chairman of the committee that if they lay aside the tax bill it may be a long time before it is passed. I think we ought to go on and attend to the business before the Senate now. We ought to pass this tax-reduction bill. There are many other bills that ought to be taken up. I do not care to object, but if the bill is laid aside I shall endeavor to bring up some matters that may take two or three days.

Mr. NEELY. Mr. President, I rise to a parliamentary inquiry.

The PRESIDENT pro tempore. The Senator will state the inquiry.

Mr. NEELY. The inquiry is this: Inasmuch as a reconsideration of Senate bill 5 and the President's veto of that bill is a highly privileged matter, has not the Senator from New Mexico an undoubted right to bring it before the Senate without anybody's consent except that of the Presiding Officer? Does it not take precedence over the unfinished business of the Senate, which is the revenue bill?

The PRESIDENT pro tempore. The motion to proceed to the reconsideration of that bill is a privileged motion, but it will require a majority of the Senators present to carry the motion.

PENSIONS TO SPANISH-AMERICAN WAR VETERANS

Mr. DIAL. Mr. President, as the Senator from New Mexico [Mr. BURSUM] gave notice that he expects at an early date to take up the question of the President's veto of Senate bill 5, I desire to state that a day or two since I introduced Senate bill 3250, to allow increase of pensions to disabled Spanish-American War veterans. It provides for the same amount as is provided in the bill which the Presdent vetoed. I trust that this bill will receive attention at the hands of the proper committee at an early date, and that we can pass it.

These classes of soldiers were discriminated against, and I think this will remedy the defects of that bill. I am very much in hopes that the Senate will pass it.

RESTRICTION OF IMMIGRATION

Mr. SHORTRIDGE. Mr. President, I do not rise for the purpose of discussing to any extent the question which will come properly before the Senate perhaps to-morrow, or upon a later day. That question, however, rises far above the fate of men or the fate of political parties.

I have heretofore expressed my views upon the broad question of immigration. I have heard nothing to justify or induce me to change the views I have entertained and expressed. If, which I shall regret, if, which I shall deplore, the conferees shall report as perhaps we are justified in anticipating, I shall raise a point of order to such report, and I shall then undertake to justify such point of order under the rules of the Senate and under accepted parliamentary principles; but over and beyond what might be called or what some might consider a technical objection I shall, with the indulgence of the Senate, express myself upon the merits involved in this legislation.

For the moment and now I content myself with saying that immigration, or the control over the subject matter of immigration, is what has been appropriately characterized and described as a domestic question. If it be a domestic question, even as the matter of tariff, even as the matter of revenue, or any other matter is a domestic question, then the next proposition must be true, constitutionally, legally speaking. It must be true that this domestic question is under the jurisdiction of, within the constitutional power and control of, the legislative branch of our Government.

Even the dullest mind, the most perverse or egotistic mind, if such mind could lay aside its vanity and its pride, would admit that the legislative branch of our Government, represented by the House of Representatives, the Senate of the United States, and the President by virtue of his veto power, has jurisdiction over the subject matter of immigration.

The House of Representatives as of now is made up of 435 Representatives, coming from as many separate districts within the 48 States of the Union. It is peculiarly proper that such a body should have a voice in determining a domestic question, one which affects the men, the women, the children of the United States.

Inasmuch as it is a domestic question, inasmuch as that domestic question is under the jurisdiction of the legislative branch of our Government, it follows that control of such question is not within the treaty-making power of the Government under the Constitution. The treaty-making power, made up of the President and the Senate, is not all comprehensive. There are limitations to that power; and where a power under the Constitution is lodged in the legislative branch of the Government, from the very nature of the case it exists there and not elsewhere.

There is, I know, in the Constitution what Henry Clay was so eloquent in pointing out—the regal power, the power of veto. When it is exercised properly in a legislative matter no one complains; but when the regal power, as represented in the treaty-making power, is considered, it will be found that that power can not invade the legislative department.

Therefore, I have for many years thought and contended that a matter of immigration is domestic, and exclusively within the province of the legislative branch of our Government; and I have so thought and contended quite regardless of persons, quite regardless of political parties; for, if I may say so, I endeavor to project my mind far into the future, and to think of this Republic when you and I and all who are now here shall have long passed away.

I never shall consent to place this great question of immigration within the treaty-making power. Reference was made here to an early Chinese treaty. If it will not trespass too much upon the attention of the Senate, when this matter comes regularly before us I propose to say a few words with regard to one who, if the Nation understood him, should be odious forever; and I am referring now—and Senators can look up the history—to a man who was a renegade, abandoning the service of his own country to enter into the service of China. I refer to Anson Burlingame, to whom we are indebted for the treaty of 1868. That was the beginning, a departure which the men of that day did not fully grasp, or the consequences of which they did not fully realize. It was that old and infamous treaty, negotiated by a renegade, entered into through weakness, or forgetfulness, or haste by our own country, which carried the idea that the treaty-making power could control the question of immigration as bearing upon the affairs of the United States. I merely allude to that treaty of 1868 with China; I may hereafter enlarge upon it.

I rose, as I said, not to discuss the merits of this matter, but to notify all, present or elsewhere, that I shall regret, I shall deplore, the necessity of raising a point of order, which I assume now will be sustained, and in the course of that discussion I shall express myself upon the merits of the conferees' report and upon the right, the power, and the duty of the legislative branch of the Government to determine and declare the policy of the Nation in respect of immigration.

I indulge myself, however, in this hope: The conferees have not reported. Their functions have not been fully performed. They can reassemble. They can meet again, even as they have met. As I understand it, the report has not passed from them. There is yet time for them to reconsider and send a report to the House and to the Senate in conformity with the rules of the separate bodies and in conformity with the expressed, deliberate judgment of the two Houses of Congress.

I undertake now to say that the action taken by the House of Representatives and the action taken by the Senate of the Unied States was not unmannerly, was not rude, was not impolite, was not justly offensive. It was not the act of intemperate men; it was not the precipitate action of inconsiderate men highly wrought. It was the mature, deliberate judgment of the two great branches representing the people of this great Republic, and no one in any quarter, in official or in private life, at home or abroad, is justified in imputing to the House of Representatives or to the Senate any other motive or any other purpose than to serve the people of the United States of

America. No nation on this earth is justified in thinking that our motive or our purpose was otherwise.

To conclude: What was so strongly said and pertinently said by the Senator from Arkansas is true. If we concede, if we admit, that the subject of immigration is one coming properly within the treaty-making power; if we are cajoled or frightened into conferring or negotiating with one foreign country in respect of immigration we will be called upon to negotiate with other nations in respect of the same subject. I never can make any such admission or concession, Mr. President. We must stand firmly—North and South, East and West—against any such proposition. I trust that the conferees will reconsider and send a report here which we can properly and gladly and patriotically approve, and that exclusion may become a fact, a legal fact, all to the end that there may be rest in the minds of the American people, and that there may be no future misunderstanding as between us and any other nation.

TOLL OF DEATH TAXES ON LARGE ESTATES

Mr. WALSH of Massachusetts. Mr. President, I wish to call attention to a matter which was under discussion last night, simply for the purpose of having the article which I hold in my hand inserted into the RECORD. Last night we were discussing the extent to which taxes which are levied by the several States and by the National Government caused shrinkage of large estates, and I made the assertion that an examination of the figures did not show that the shrinkage was so large as alleged. I have in my hand an article published in September, 1923, in a publication known as Trust Companies. It was prepared and published for the purpose of demonstrating the advisability of rich taxpayers creating life-insurance trusts and voluntary or living trusts for the purpose of escaping the shrinkage in estates by the expenses and taxes imposed upon transmission of property at death. The title of the article is "Toll of death taxes on large estates." It is sought by the writer to show that very grave and great shrinkage is caused by the various taxes levied upon estates. One paragraph of the article reads as follows:

> The table published herewith was prepared by Dan Nelson, of Minneapolis, and represents an exhaustive search of the records of probate courts during the past year in all the large cities east of Kansas City and north of Louisville. It comprehends examination of over 2,000 estates. The net estate, after deducting debts, is used as the basis for computing depreciation due to Federal estate tax, State inheritance taxes, transfer and other taxes, as well as administration costs, which have been vastly increased because of the chaotic condition of the tax laws of the various States and the burdens of collection.

This compiler has selected about 17 of the largest estates. The table sets forth the net estate, the administration tax, as it is called, which is, of course, the expense of administration, the Federal estate tax, the State inheritance tax, and other taxes, which include transfer taxes; then the total amount of the shrinkage; and finally the percentage of the shrinkage in each estate.

From this examination it appears that the largest shrinkage was 40.3 per cent, and was upon the estate of Theodore P. Shonts; the second was 34.7 per cent, upon the estate of William L. Harkness; the third was 29.9 per cent, upon the estate of Frederick G. Bourne. The figures show that in 12 of the estates the shrinkage was less than 20 per cent.

I cite these figures, not that I think the rate of taxes upon inheritance should be increased, but to challenge the argument that is so commonly made that we have gone so far into the field of levying taxes upon estates and inheritances that we have approached the point of confiscating property which is transmitted by death. Of course the table would be more illuminating in showing the per cent of shrinkage of estate caused by death taxes—so-called—if the administration tax and other expenses were not included, because this would have to be paid by estate regardless of State and National taxes. Mr. President, I ask that this article, which is brief and short, may be printed in the RECORD.

The PRESIDING OFFICER (Mr. OVERMAN in the chair). Without objection, it is so ordered.

The article is as follows:

TRUST COMPANIES

TOLL OF DEATH ON LARGE ESTATES

It is clearly the duty of trust companies, as fiduciaries, to awaken the man of moderate means as well as the rich man to the heavy toll which death taxes, including Federal and State inheritance, estate, and transfer taxes, will levy upon his estate unless legitimate methods of conservation are employed. The table published herewith, showing the shrinkage in some of the largest American fortunes which have passed through probate courts within the past few years, owing to death taxes and costs of adminstration, provides an illuminating argument as to the advantages to men of large fortunes of creating living trusts and life insurance trusts. But the obligation upon trust companies, as conservators of estates, of calling attention to such precautions, is far more urgent in connection with estates left by men of small or moderate means who can ill afford such heavy depreciation.

The table published herewith was prepared by Dan Nelson, of Minneapolis, and represents an exhaustive search of the records of probate courts during the past year in all the larger cities east of Kansas City and north of Louisville. It comprehends examination of over 2,000 estates. The net estate, after deducting debts, is used as the basis for computing depreciation due to Federal estate tax, State inheritance taxes, transfer and other taxes, as well as administration costs, which have been vastly increased because of the chaotic condition of the tax laws of the various States and the burdens of collection.

According to the table the largest shrinkage shown is that of the Theodore P. Shonts estate, amounting to 40.3 per cent of the net estate. The estate of William L. Harkness, of New York, shows a shrinkage of 34.7 per cent; the Frederick G. Bourne estate, 29.9 per cent; the George W. Perkins estate, 27.7 per cent; and the George von L. Meyer estate, 22.4 per cent.

While the tribute upon large estates in behalf of Federal and State tax-levying authorities is a sufficiently serious matter to demand corrective legislation, the loss to beneficiaries is not to be compared to the injurious effect upon business and industry. Such taxes call for enforced liquidation of investments and securities at sacrifice prices. General welfare of the country is penalized to provide Federal and State tax jurisdictions with overflowing coffers as inducement to extravagance in public finances. Equally serious is the adverse influence of high surtaxes and inheritance taxes in diverting capital from useful investments into tax-exempt securities which the Federal Government is grinding out in huge volume and thereby defeating its own measures.

Trust companies and life insurance companies have a mutual interest in urging the creation as well as the preservation of estates, large and small, through the medium of life insurance trusts and of voluntary or living trusts. The man who by thrift and industry has husbanded his thousands instead of millions is entitled to the redress which such trust instruments afford. Men of large fortunes need such insurance or safeguards if for no other reason than to avoid drastic liquidation of investments to provide ready cash to pay confiscatory death taxes.

Table showing shrinkage of large estates due to death taxes

Name and residence	Net estate	Administration tax	Federal estate	State inheritance tax	Other taxes	Shrinkage	Per cent
Bourne, Frederick G., Suffolk County, N. Y.	$42,828,685.64	$438,928.08	$9,596,364.94	$1,578,336.36	$1,228,979.35	$12,842,608.73	29.9
Burnham, William, Philadelphia, Pa.	1,366,051.50	49,651.65	123,419.67	26,207.16	14,685.68	213,964.16	15.6
Caldwell, James E., Philadelphia, Pa.	739,261.86	27,534.02	21,880.60	12,793.52	72,051.15	134,259.29	18.1
Cochrane, Alexander, Suffolk County, Mass.	3,101,319.67	42,235.19	307,128.19	61,525.08	21,430.05	432,318.51	13.9
Coolidge, T. Jefferson, Essex County, Mass.	6,295,143.97	48,076.35	854,488.04	108,167.11	136,194.48	1,146,925.98	18.2
Crimmins, John D., New York County, N. Y.	4,767,223.71	110,740.96	610,403.97	122,456.42	42,563.15	876,164.50	18.1
Dickey, Charles D., New York County, N. Y.	2,759,088.65	80,079.36	275,122.65	80,803.38	88,404.95	524,410.34	19.0
Farrell, William H., Bridgeport, Conn.	540,628.24	38,568.13	13,840.83	11,332.98	6,789.23	64,531.17	11.9
Fleisher, Simon B., Philadelphia, Pa.	3,578,364.12	168,187.27	351,326.67	58,561.69	67,931.36	646,006.99	18.5
Harkness, William L., New York County, N. Y.	54,384,592.92	1,580,326.91	12,924,785.57	1,989,421.01	2,383,433.66	18,877,967.15	34.7
Hegeman, John R., Westchester County, N. Y.	3,295,307.66	168,146.47	298,904.47	118,931.55	69,813.91	655,796.40	19.9
Meyer, Geo. von L., Essex County, Mass.	1,255,183.37	25,122.55	153,425.15	44,366.31	58,547.60	281,461.81	22.4
Newbold, Arthur E., Philadelphia, Pa.	1,153,465.38	16,372.15	96,842.75	18,735.10	90,771.37	222,721.37	19.3
Newman, William H., New York County, N. Y.	785,689.27	49,363.65	51,023.11	29,919.74	8,160.20	138,466.70	17.6
Perkins, George W., New York County, N. Y.	5,923,420.77	216,364.24	744,175.99	248,806.86	430,044.60	1,639,391.69	27.7
Plunkett, William B., Berkshire County, Mass.	842,541.75	30,722.82	72,476.15	25,552.98	9,586.48	138,238.43	16.4
Shonts, Theodore P., New York County, N. Y.	289,263.41	80,060.74	2,606.71	6,154.26	27,987.54	116,809.25	40.3

Mr. WALSH of Massachusetts. Mr. President, it should be noted that this shrinkage includes administration expenses, and that the percentage of shrinkage is based upon the net estate. The "net estate" is, of course, not necessarily the same as the total estate available for distribution. For example, bequests to charities are deductible in determining the net estate subject to tax, although if such bequests were large the administration expenses would be accordingly great. Thus in the case of the Shonts estate I understand there were large amounts given to benevolent institutions; the net estate subject to tax was relatively small. For this reason I have calculated the percentages of these net estates paid out in State, Federal, and other taxes. It will be observed that the Shonts estate shrinkage is 12.7 per cent instead of 40.3 per cent, and in only one case were the taxes more than 30 per cent of the net estate, and in more than half the cases they totaled less than 15 per cent. The percentage of shrinkage from taxes alone, eliminating administration expenses, is as follows: Bourne estate, 28.9 per cent; Burnham estate, 12 per cent; Caldwell estate, 14.4 per cent; Cummins estate, 16 per cent; Dickey estate, 16.1 per cent; Farrell estate, 4.8 per cent; Fleisher estate, 13.3 per cent; Harkness estate, 31.8 per cent; Hegeman estate, 14.7 per cent; Newman estate, 11.3 per cent; Perkins estate, 24 per cent; Plunkett estate, 12.7 per cent; Shonts estate, 12.7 per cent.

TAX REDUCTION

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 6715) to reduce and equalize taxation, to provide revenue, and for other purposes.

Mr. SMOOT. Mr. President, the next committee amendment passed over will be found on page 170, and is known as the gift-tax amendment. Let the Secretary report the amendment.

The PRESIDING OFFICER. The Secretary will state the amendment.

The READING CLERK. On page 170, the committee proposes to strike out lines 13 to 25, both inclusive, all of pages 170, 171, 172, 173, and down to and including line 2 on page 174, as follows:

SEC. 319. On and after January 1, 1924, a tax equal to the sum of the following is hereby imposed upon the transfer of property by gift, whether made directly or indirectly, by every person, whether a resident or nonresident of the United States:

One per cent of the amount of gift not in excess of $50,000;

Two per cent of the amount by which the gifts exceed $50,000 and do not exceed $100,000;

Three per cent of the amount by which the gifts exceed $100,000 and do not exceed $150,000;

Four per cent of the amount by which the gifts exceed $150,000 and do not exceed $250,000;

Six per cent of the amount by which the gifts exceed $250,000 and do not exceed $450,000;

Nine per cent of the amount by which the gifts exceed $450,000 and do not exceed $750,000;

Twelve per cent of the amount by which the gifts exceed $750,000 and do not exceed $1,000,000;

Fifteen per cent of the amount by which the gifts exceed $1,000,000 and do not exceed $1,500,000;

Eighteen per cent of the amount by which the gifts exceed $1,500,000 and do not exceed $2,000,000;

Twenty-one per cent of the amount by which the gifts exceed $2,000,000 and do not exceed $3,000,000;

Twenty-four per cent of the amount by which the gifts exceed $3,000,000 and do not exceed $4,000,000;

Twenty-seven per cent of the amount by which the gifts exceed $4,000,000 and do not exceed $5,000,000;

Thirty per cent of the amount by which the gifts exceed $5,000,000 and do not exceed $8,000,000;

Thirty-five per cent of the amount by which the gifts exceed $8,000,000 and do not exceed $10,000,000;

Forty per cent of the amount by which the gifts exceed $10,000,000.

SEC. 320. The amount of the gifts subject to the tax imposed by section 319, in the case of residents, shall be the sum of all the gifts made by such resident during the calendar year, and in the case of nonresidents, the sum of all gifts so made of property situated within the United States. If the gift is made in property the fair market value thereof at the date of the gift shall be considered the amount of the gift subject to the tax.

Where property is sold or exchanged for less than a fair consideration in money or money's worth, then the amount by which the fair market value of the property exceeded the consideration received shall, for the purpose of the tax imposed by section 319, be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

SEC. 321. For the purpose of this tax the amount of the gift subject to the tax imposed by section 319 shall be determined—

(a) In the case of a resident, by deducting from the total amount of such gifts—

(1) An exemption of $50,000;

(2) The amount of all gifts or contributions made within the calendar year to or for any donee or purpose specified in paragraph (3) of subdivision (a) of section 303, or to the special fund for vocational rehabilitation authorized by section 1 of the vocational rehabilitation act;

(3) Gifts the aggregate amount of which to any one person does not exceed $500.

(b) In the case of a nonresident, by deducting from the total amount of such gifts—

(1) The amount of all gifts or contributions made within the calendar year to or for any donee or purpose specified in paragraph (3) of subdivision (a) of section 303, or to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act;

(2) Gifts the aggregate amount of which to any one person does not exceed $500.

SEC. 322. In case a tax has been imposed under section 319 upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this title to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the estate tax, which would otherwise be chargeable against the estate of the decedent under the provisions of section 301, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by section 319 with respect to a gift or gifts which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears or bear to the total amount of gifts in that year.

SEC. 323. Any person who within the year 1924 or any calendar year thereafter makes any gift or gifts of an aggregate value in excess of $10,000 shall, on or before the 15th day of the third month following the close of the calendar year, file with the collector a return under oath in duplicate, listing and setting forth therein all gifts and contributions by him made during such calendar year, and the fair market value thereof when made, and also all sales and exchanges of property owned by him made within such year for less than a fair consideration in money or money's worth, stating therein the fair market value of the property so sold or exchanged and that of the consideration received by him, both as of the date of such sale or exchange.

SEC. 324. The tax imposed by section 319 shall be paid by the donor on or before the 15th day of the third month following the close of the calendar year, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

Mr. WALSH of Massachusetts. Mr. President, I move as an amendment to the committee amendment that in lieu of what is stricken out the following amendment be added.

The PRESIDING OFFICER. The Secretary will state the substitute offered by the Senator from Massachusetts.

The READING CLERK. After section 323, in lieu of the matter proposed to be stricken out, the Senator from Massachusetts proposes to insert the following:

PART II

SEC. 324. On and after January 1, 1924, a tax equal to the sum of the following is hereby imposed upon the transfer of property by gift, whether made directly or indirectly, by every person, whether a resident or nonresident of the United States:

One per cent of the amount of the gifts not in excess of $25,000.

Two per cent of the amount by which such gifts exceed $25,000 and do not exceed $50,000.

Three per cent of the amount by which such gifts exceed $50,000 and do not exceed $75,000.

Four per cent of the amount by which such gifts exceed $75,000 and do not exceed $100,000.

Six per cent of the amount by which such gifts exceed $100,000 and do not exceed $200,000.

Nine per cent of the amount by which such gifts exceed $200,000 and do not exceed $500,000.

Twelve per cent of the amount by which such gifts exceed $500,000 and do not exceed $1,000,000.

Eighteen per cent of the amount by which such gifts exceed $1,000,000 and do not exceed $2,000,000.

Twenty-four per cent of the amount by which such gifts exceed $2,000,000 and do not exceed $3,000,000.

Thirty per cent of the amount by which such gifts exceed $3,000,000 and do not exceed $5,000,000.

Thirty-six per cent of the amount by which such gifts exceed $5,000,000.

SEC. 325. The amount of the gifts subject to the tax imposed by section 324, in the case of residents shall be the sum of all the gifts made by such resident during the calendar year, and in the case of nonresidents the sum of all gifts so made of property situated within the United States. If the gift is made in property, the fair market value thereof at the date of the gift shall be considered the amount of the gift subject to the tax.

Where property is sold or exchanged for less than a fair consideration in money or money's worth then the amount by which the fair market value of the property exceeded the consideration received shall, for the purpose of the tax imposed by section 324, be deemed a gift and shall be included in computing the amount of gifts made during the calendar year.

SEC. 326. The following gifts shall be exempt from taxation under section 324:

(a) In the case of a resident—

(1) The amount of all gifts made within the calendar year to the persons or organizations and for the purposes specified in paragraph (3) in subdivision (a) of section 307, or to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act;

(2) Gifts to the spouse of the donor, to the extent that the total amount of the gifts of such spouse during the calendar year does not exceed $50,000;

(3) Gifts to a parent, child, adopted child, or grandchild of a donor, to the extent that the total amounts of the gifts to all such persons during the calendar year does not exceed $25,000; and

(4) Gifts to any person other than those specified in paragraphs (2) and (3), to the extent that the total amount of the gifts to all such other persons during the calendar year does not exceed $10,000.

(b) In the case of a nonresident—

(1) The amount of all gifts made within the calendar year to the persons or organizations and for the purposes specified in paragraph (3) of subdivision (b) of section 307, or to the special fund for vocational rehabilitation authorized by section 7 of the vocational rehabilitation act; and

(2) The gifts specified in paragraphs (2), (3), and (4) of subdivision (a) of this section, subject to the limitations therein imposed.

SEC. 327. In case a tax has been imposed under section 324 upon any gift, and thereafter upon the death of the donor the amount thereof is required by any provision of this title to be included in the gross estate of the decedent then there shall be credited against and applied in reduction of the inheritance tax, which would otherwise be chargeable upon the transfer of such property by the decedent under the provisions of section 301, an amount equal to the tax paid with respect to such gift; and in the event the donor has in any year paid the tax imposed by section 324 with respect to a gift or gifts, which upon the death of the donor must be included in his gross estate and a gift or gifts not required to be so included, then the amount of the tax which shall be deemed to have been paid with respect to the gift or gifts required to be so included shall be that proportion of the entire tax paid on account of all such gifts which the amount of the gift or gifts required to be so included bears to the total amount of gifts in that year.

SEC. 328. Any person who within the year 1924 or any calendar year thereafter makes any gift or gifts of an aggregate value in excess of $10,000 shall, on or before the 15th day of the third month following the close of the calendar year, file with the collector a return under oath in duplicate, listing and setting forth therein all gifts and contributions by him made during such calendar year, and the fair market value thereof when made, and also all sales and exchanges of property owned by him made within such year for less than a fair consideration in money or money's worth, stating therein the fair market value of the property so sold or exchanged and that of the consideration received by him, both as of the date of such sale or exchange.

SEC. 329. The tax imposed by section 324 shall be paid by the donor on or before the 15th day of the third month following the close of the calendar year, and shall be assessed, collected, and paid in the same manner and subject, in so far as applicable, to the same provisions of law as the tax imposed by section 301.

Mr. WALSH of Massachusetts. Mr. President, sections 319 to 324, inclusive, in the bill as it passed the House, have been stricken out by the Senate Finance Committee. Those sections relate to a tax upon gifts of money or property.

A similar provision was passed by the Senate when the revenue act was under consideration in 1921. At that time I offered an amendment similar to the amendment which is now presented, and which was adopted by the Senate, but it was removed from the bill in conference. If the Senate will now support this amendment, it will be impossible for the conferees to remove from the bill a provision for a gift tax.

The gift tax would serve as a safeguard for two important sections of this bill, namely, the estate tax and the personal income tax. It will go a long way toward preventing evasion of both of those taxes by the transfer of possession to relatives or friends for the purpose of reducing incomes or estates so as to bring them within a tax bracket where they would be subject to lower tax rates. The need of a safeguard upon the tax liability of the larger incomes and estates is well recognized. The Secretary of the Treasury, Mr. Mellon, recently said:

> Taxpayers on large incomes and businesses are finding a hundred different methods of legally reducing their obligations to the Government. One of the most common methods found in vogue by Treasury experts was for men of large incomes to create trusts for members of their families, thus reducing their own net income and consequent liability for taxes.

The chairman of the Ways and Means Committee of the House, Mr. GREEN of Iowa, said in the House of Representatives, when this gift tax proposal was being considered, the following:

> A gift tax is corollary to an estate tax. The estate tax at the present time is being largely evaded by the splitting up of the large estates. I, myself, know of one large estate which has been divided into four parts by the owner thereof, giving to his wife one part and one part to each of his three children. The gifts were made outright. They are absolute in form. They can not be attacked by the Treasury. But at the same time the man who made them has never lost control over the property. He now has as much control over the property as he ever had.
>
> This amendment also is needed on account of the income tax. The splitting up of large estates, of course, reduces the amount of surtaxes to be laid upon the party who so divides them. We have lost more, in my judgment, by the division of these large estates in our income taxes than we have lost by reason of tax-exempt securities, and we have lost millions upon millions by reason of tax-exempt securities.

There are provisions under the present law to tax gifts in anticipation of death. A gift made within a two-year period prior to death is presumed to be a gift in anticipation of death and is included within the property that passes under the estate or inheritance tax. But there is no provision of law imposing a tax upon gifts between the living; and the greatest evasion of all evasions of the income tax has been the making of gifts by the head of a family to his wife and children, either directly or through trusts, for the purpose of having his income so reduced that he would fall within the lower brackets.

Mr. CARAWAY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Arkansas?

Mr. WALSH of Massachusetts. I yield.

Mr. CARAWAY. Is there any provision in the proposed amendment that exempts from taxes gifts that are made to schools or hospitals?

Mr. WALSH of Massachusetts. Yes; all charitable and religious gifts are excluded. I propose no change from the House provisions in this respect.

Though the attempt has been made again and again to reach evasion, no tax has been imposed upon gift giving. One expert estimated that the amount of revenue lost by our Government through gifts from the living is as much as $600,000,000. That is an enormous sum. Perhaps it is too high, but the evasions have been staggering.

Mr. President, I understand the Finance Committee struck the gift tax from the bill because it was thought to be difficult to collect and open to evasion. The same arguments would be applicable to every other section of the bill. All of these taxes are difficult to collect; and in the past every form of tax has been subject to evasion. In fact, the appealing feature of this tax is to minimize evasions of other taxes. Granting that in some instances it, too, may possibly be evaded, the tax dodger will have to scale two fences instead of one. At least we should not attempt to assist those who seek to avoid taxes by refusing the remedy which the House has approved and which will surely make more difficult a practice which is well known to exist. Do we want to hinder those who are escaping taxation? Let us not pass this bill without making some attempt to correct an abuse which is so well known to everybody who has studied the operation of the present revenue law.

The significant feature of the proposed gift tax is that it will not cost a single person one cent in additional taxes unless they so choose. Gifts amounting to $85,000 may be made to different persons within the period of one year without being

subject to the tax. It is only upon the larger gifts that the tax is to be applied. There is something in human nature that leads men, even parents, to cling to their possessions until death comes; and it is very rarely that substantial gifts are made, even to the members of one's family, during lifetime, except for the purpose of escaping taxation. If fabulous gifts are distributed, I do not see why we should hesitate to tax them. Certainly there is no hardship attached to such a tax, for only those whose good fortune it is to be able to give large gifts to their relatives or friends would be called upon to pay.

Again and again an effort has been made to impose some form of gift tax. In the last tax bill the Senate imposed a gift tax. It was stricken out in conference. At this session the House has imposed a gift tax and the Senate committee has recommended its removal. If the Senate now goes on record in favor of some form of gift tax, it will be enacted. It will be a question merely of rates, because the House has already committed itself.

Personally, I think we are acting when it is too late. I think the bird has flown. I think that so many and so extensive gifts have been made in the last seven years that it is almost impossible to collect anything under a gift tax. But that does not justify leaving the door wide open for a man to continue to make gifts which will permit him to escape the fair and just income and inheritance taxes imposed upon him under the law.

The purpose of gifts inter vivos is to lower the income tax by splitting up the volume of the taxable property. In the amendment proposed by me I have used exactly the same rates as were inserted in the amendment offered last night in relation to the inheritance tax, the principle being that the amount of money which passes beween the living during the lifetime of the taxpayer should be taxed equally with the amount which passes at the time of death. So the tax upon a transfer by gift of $100,000 to a man's wife is only $750 under the provisions of the amendment. The rates are very conservative and very moderate and do not begin appreciably to affect the amounts of gifts except in the cases of excessively large gifts. Even in the case of a gift of $5,000,000 the tax would not be much over 25 per cent of the gift.

I do not know that there is anything more I care to say upon the amendment. It is presented for the purpose of making the law uniform as to gifts made at the time of death and gifts made among the living during the lifetime of the taxpayer. The rates are based upon the principle that a gift during lifetime ought to bear the same tax as a gift made to a beneficial interest at the time of death.

Mr. SMOOT. Mr. President, last evening the committee agreed to the inheritance-tax provision as stated by the Senator from Massachusetts. In order that the matter may go to conference together with the House provision I have no objection to having it agreed to. I ask that the amendment offered by the Senator from Massachusetts may be agreed to.

Mr. FLETCHER. I did not catch the point where the tax begins to apply to gifts. Suppose a father makes a gift to his children or to his wife in his lifetime, where does the tax begin?

Mr. WALSH of Massachusetts. If a husband makes a gift to his wife there is an immediate exemption of $50,000. He can give his wife $50,000 without any tax at all. If he makes a gift to a child, the exemption is $25,000. If he makes a gift to a stranger, the exemption is $10,000.

Mr. FLETCHER. How would it apply in the case of his making a gift of $50,000 this year and then five years from now making another gift of $50,000?

Mr. WALSH of Massachusetts. Each year is separate. There does not seem to be any way of reaching the condition the Senator mentions. But I want to repeat that I think the estates have been so split up through our failure to pass a strict gift tax years ago that we are not going to get much out of it, though it will yield something in the future.

Mr. FESS. Mr. President——

The PRESIDING OFFICER (Mr. MOSES in the chair). Does the Senator from Massachusetts yield to the Senator from Ohio?

Mr. WALSH of Massachusetts. I yield.

Mr. FESS. How would the amendment apply to a gift to a university or a benevolent institution?

Mr. WALSH of Massachusetts. They are exempt. Gifts for public purposes, or to any religious, charitable, scientific, literary, or educational organization, including organizations for the encouragement of art and the prevention of cruelty to children or animals, are exempt.

Mr. SIMMONS. Mr. President, I do not as a general proposition feel disposed to give my assent to the principle involved in gift taxes. In ordinary conditions I would say that it is not a wise way of raising revenue for the Government. But conditions which confront us are abnormal and seem to me to make the imposition of a tax of this sort absolutely essential.

There are two kinds of taxes which we find it necessary to levy in the conditions which now obtain. One is the income tax, the other is the inheritance tax. From both of those taxes the Government realizes a very large amount of revenue, revenue that it can not dispense with, that is absolutely necessary to enable us to finance the Government. One of the favorite methods of evading the income tax is through the splitting up of large incomes among members of the family, thus evading the higher rates imposed by surtaxes. That has been very generally resorted to especially by men of large incomes and the Government has lost an immense amount of revenue through that means of evasion.

The inheritance tax also has been extensively evaded in the same way. We have had no provision in the law up to this time that has afforded anything like adequate protection to the Government against those two methods of evasion. We have no statistics. Probably no statistics are available under any conditions, but we have none which would indicate exactly the amount of revenue that has been lost by this method of evading the income tax and this method of evading the estate tax as now imposed. But they have been sufficiently large and extensive, as is now generally conceded, to very greatly impair the revenues of the Government. It is a leak that ought to be stopped, and there is absolutely no way to stop it except by the imposition of a gift tax.

I rose simply to say that if it were not for that condition of things I would not favor a gift tax.

Mr. McLEAN. Mr. President, I have not had an opportunity to read the amendment, and I wish the Senator from Massachusetts would explain the exceptions and just what gifts are excluded.

Mr. WALSH of Massachusetts. A gift of $50,000 by husband to wife——

Mr. McLEAN. I understand about the gifts to members of the family, but I am inquiring more particularly about charitable gifts.

Mr. WALSH of Massachusetts. There are exactly the same exceptions that are in the House provisions of the bill.

Mr. McLEAN. Gifts to the public for any public purpose?

Mr. WALSH of Massachusetts. As to gifts for charitable, religious, or educational purposes, exactly the same exemptions are made as are made in the House text.

Mr. ROBINSON. There is no limitation on gifts for charitable, educational, or religious purposes?

Mr. WALSH of Massachusetts. None at all.

Mr. McLEAN. Would that include a gift for a public building? Is the language broad enough for that?

Mr. WALSH of Massachusetts. I understand it would.

Mr. McLEAN. I think it should.

Mr. SIMMONS. It would cover a building only for the purposes mentioned.

Mr. McLEAN. For any specific purpose such as a town hall.

Mr. SMOOT. It would cover any specific purpose.

Mr. McLEAN. Or a building for entertainment purposes?

Mr. WALSH of Massachusetts. I think it would cover that.

Mr. SIMMONS. I think that would be a matter of construction.

Mr. WALSH of Massachusetts. Mr. President, I wish to say a few words further in order to illustrate the manner in which gifts are used to evade income and inheritance taxes.

Suppose Jones enjoys the income from $1,000,000, or $50,000 per year. The normal tax and the surtax at the rates adopted by the Senate are $6,137.50. If Jones gives his wife half of his property, or $500,000, in trust or otherwise, the income taxes on the $25,000 of income which each spouse will receive will be $1,547.50, or a total saving in taxes on the income of the husband and wife of $3,042.50. The saving in the cases of larger incomes will be proportionately greater as the surtaxes increase. It can not be doubted, therefore, that if we are to make the tax laws effective, we must place some tax upon the gifts which are now being used to evade them.

Or suppose, in the second place, that Jones leaves an estate of $200,000 to his wife and child. The total taxes on the transfers under the provisions adopted by the Senate would be $3,600. If, however, Jones gave $100,000 to his wife and child, not in contemplation of his death, and thus left an estate of $100,000 to his wife and child, the total inheritance taxes would be $800, or a saving in transfer taxes of $2,800. If Jones owned $1,000,000 of property and gave to his wife and

child $500,000 of it, not in contemplation of his death, leaving the remainder to them on his death, the saving in transfer taxes would be $45,000.

The gift tax which I propose would insure that a tax on the transfer would be collected, whether the transfer is made by gift during the lifetime of the donor, or by intestate succession, or by will at his death. If the transfer is to be taxed by the Federal Government at all, it should be taxed whether made during the life or at the death of the transferor. Otherwise the Federal Government is only making an empty pretense of taxing such transfers.

The PRESIDING OFFICER. The question is upon agreeing to the amendment proposed by the Senator from Massachusetts [Mr. WALSH] to the amendment of the committee.

The amendment to the amendment was agreed to.

The PRESIDING OFFICER. The question now is upon agreeing to the amendment as amended.

The amendment as amended was agreed to.

Mr. SMOOT. On page 62, line 20——

Mr. WALSH of Massachusetts. Mr. President, will the Senator yield to me for a moment?

Mr. SMOOT. Yes.

Mr. WALSH of Massachusetts. I ask unanimous consent that the Secretary may be authorized to make such changes in the numbering of the sections and in the totals as may be necessary to make the amendment conform to the bill.

Mr. SMOOT. I will say to the Senator that unanimous consent was granted for that purpose when the bill was first taken up.

Mr. WALSH of Massachusetts. Very well.

Mr. SMOOT. On page 62, line 20, I move to strike out "paragraph (1) of."

I will state that this is made necessary by the adoption of the normal tax as proposed by the Senator from North Carolina [Mr. SIMMONS].

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. SMOOT. The next amendment I propose is on page 111, line 15, to strike out "(a)."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

Mr. SIMMONS. As I understand, that amendment covers merely an administrative matter?

Mr. SMOOT. It is a clerical amendment, I will say to the Senator. The amendment that was agreed to made only the one paragraph necessary.

Mr. SIMMONS. I only wished to be sure that it did not affect the substance.

Mr. SMOOT. There are three other amendments which I desire to have action upon, and I send them to the desk. Then I shall make a brief statement as to what they are. I now offer the amendments which I send to the desk.

The PRESIDING OFFICER. The first amendment proposed by the Senator from Utah will be stated.

The READING CLERK. On page 45 it is proposed to strike out from line 8 to line 18, both inclusive, and to insert in lieu thereof the following:

No tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended and shall not be construed to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax as provided for in this title upon the part or portion of such income to which such person is entitled under such contract.

Mr. JONES of New Mexico. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from New Mexico?

Mr. SMOOT. I merely wish to make a brief statement as to the purpose of the amendment.

Mr. JONES of New Mexico. I should like to inquire where the amendment comes in.

Mr. SMOOT. I may say that I offer the amendment personally. All of the committee amendments have now been disposed of, and the bill is open for individual amendments. I am merely offering the amendment personally and not for the committee.

Mr. JONES of New Mexico. On what page does the amendment come in?

Mr. SMOOT. On page 45 to strike out from lines 8 to 18, inclusive, and to insert in lieu thereof the matter which has just been read at the desk.

For the RECORD, Mr. President, I wish to make a brief statement as to the effect of the amendment.

The PRESIDING OFFICER. The Chair calls the attention of the Senator from Utah to the fact that as the amendment has been stated it does not seem to correspond with the print of the bill.

Mr. SMOOT. Mr. President, the amendment has been stated correctly. It is to strike out from line 8 down to and including line 18, and to insert the matter which has been read so that it will read:

Or maintain a public utility, no tax shall be levied under the provisions of this title—

And so forth.

The PRESIDING OFFICER. The Chair stands corrected. The Senator from Utah is accurate.

Mr. WALSH of Massachusetts. Mr. President, will the Senator yield for a moment?

Mr. SMOOT. I yield.

Mr. WALSH of Massachusetts. Did I understand the Senator from Utah to say that the stage in the consideration of the bill has been reached where amendments may be offered from the floor?

Mr. SMOOT. Yes.

Mr. WALSH of Massachusetts. I should like to have all Senators informed of that fact by suggesting the absence of a quorum, if that is agreeable to the Senator from Utah, because a number of Senators desire to be advised when that stage in the consideration of the bill is reached.

Mr. SMOOT. I thought of doing that as soon as we had concluded the amendments I have offered.

Mr. WALSH of Massachusetts. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The principal clerk called the roll, and the following Senators answered to their names:

Adams	Edge	Keyes	Shields
Ashurst	Ferris	Ladd	Shipstead
Bayard	Fess	Lodge	Simmons
Borah	Fletcher	McKellar	Smoot
Brandegee	Frazier	McKinley	Stanfield
Brookhart	George	McLean	Stephens
Bruce	Gerry	Moses	Sterling
Bursum	Glass	Neely	Trammell
Cameron	Gooding	Norbeck	Underwood
Capper	Harreld	Norris	Wadsworth
Caraway	Harris	Oddie	Walsh, Mass.
Colt	Heflin	Pepper	Walsh, Mont.
Copeland	Howell	Ralston	Watson
Curtis	Johnson, Calif.	Reed, Mo.	Weller
Dale	Johnson, Minn.	Reed, Pa.	Wheeler
Dial	Jones, N. Mex.	Robinson	Willis
Dill	Kendrick	Sheppard	

Mr. NEELY. I wish to announce that the Senator from Utah [Mr. KING] is sitting with the Committee on Privileges and Elections, which is now engaged in hearing testimony in the Mayfield case; and I wish further to state that the Senator from Missouri [Mr. SPENCER] and the Senator from Kentucky [Mr. ERNST] are similarly engaged.

Mr. McKINLEY. I desire to announce that the Senator from South Carolina [Mr. SMITH], the Senator from Louisiana [Mr. RANSDELL], the Senator from Washington [Mr. JONES], and the Senator from Oregon [Mr. MCNARY] are attending a meeting of the Agricultural Committee.

Mr. COPELAND. I desire to announce that the Senator from Louisiana [Mr. BROUSSARD] and the Senator from North Carolina [Mr. OVERMAN] are sitting with the Committee on Appropriations.

The PRESIDING OFFICER. Sixty-seven Senators having answered to their names, a quorum is present.

Mr. SMOOT. Mr. President, while Senators are in the Chamber I want to state that all committee amendments have been disposed of; and I shall now offer three amendments to certain provisions of the bill that are recommended by the department and I think also agreed to by the minority members of the committee.

The Secretary has stated the first amendment, and I want to make a brief statement as to what it is before the Senate votes upon it.

The amendment merely restores the language of the existing law, which was changed in the House bill principally for purposes of clarity. The theory of both the existing law and the House bill is the same in that they provide for the exemption from tax of a city operating a public utility, but state that exemption shall not, directly or indirectly, apply to any private individual. It has been found that although the provisions of the House bill are more clear as applied to some of these contracts, they do not apply properly to others, and it is thought desirable to restore the language of the existing law.

Mr. JONES of New Mexico. Mr. President, I think that is a very proper amendment. It concerns a rather involved situation in some instances, and it is desirable that this amendment be made so that the whole question may be thrown into conference and worked out to meet the varying situations which have developed since this language was written.

Mr. McKELLAR. May the amendment be stated again?

The PRESIDING OFFICER. The amendment will be stated.

The READING CLERK. On page 45, it is proposed to strike out lines 8 to 18, inclusive, and to insert in lieu thereof the following:

no tax shall be levied under the provisions of this title upon the income derived from operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended and shall not be construed to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax, as provided for in this title, upon the part or portion of such income to which such person is entitled under such contract.

Mr. McKELLAR. Mr. President, will the Senator from Utah explain what is intended to be done by the amendment?

Mr. SMOOT. It just restores the existing law.

Mr. McKELLAR. I know; but what law is it restoring? What is the purpose of it? Is it to relieve street-car companies and other public utilities from taxation?

Mr. SMOOT. No. The statement I made is just about as brief as it possibly can be made, and I will read it again, so that the Senator can hear it.

Mr. McKELLAR. I would rather have the Senator tell me what the provision means.

Mr. SMOOT. It means this: It exempts the city, but it does not exempt the private individual.

Mr. McKELLAR. Does it exempt the public utilities?

Mr. SMOOT. No; it does not. It exempts the city's share, whatever it may be, in a public utility, and there are quite a number of them in the United States.

Mr. McKELLAR. Oh! It applies only to municipally owned concerns?

Mr. SMOOT. Yes; wherever they have an interest.

Mr. McKELLAR. The reason why I am asking the question is this: I saw an advertisement a day or two ago in which one of the utilities here in Washington was advertising that it was exempted from all city taxes, and I was just wondering whether or not it was under this provision. It did not read that way, but I wanted an explanation of the matter.

Mr. SMOOT. I saw such a statement made, and I assure the Senator that it is not true. I do not know whether the statement related to the street cars in Washington or not, but I saw such an advertisement.

Mr. McKELLAR. Of course, if the provision merely applies to municipally owned public utilities, or those in which municipalities have an interest, I have no objection at all to it.

Mr. SMOOT. That is all there is to it.

Mr. NORRIS. Mr. President, I have not found the amendment yet. What page is it on?

The PRESIDING OFFICER. On page 45, lines 8 to 18.

Mr. NORRIS. I will ask the Secretary to state the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The READING CLERK. On page 45, it is proposed to strike out lines 8 to 18——

Mr. NORRIS. I will ask to have the Secretary read what is stricken out.

The READING CLERK. It is proposed to strike out the following words:

the tax upon the income from the operation of such public utility shall be collected and paid in the manner and at the rates prescribed in this title; but there shall be refunded to such State, Territory, or political subdivision thereof, or the District of Columbia, under rules and regulations to be prescribed by the commissioner, with the approval of the Secretary, a part of such tax equal to the amount by which the share of the income from the operation of such public utility accruing to such State, Territory, or political subdivision thereof, or the District of Columbia, was reduced by the imposition of such tax.

In lieu of that matter, it is proposed to insert the following:

no tax shall be levied under the provisions of this title upon the income derived from operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended and shall not be construed to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax as provided for in this title upon the part or portion of such income to which such person is entitled under such contract.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. NORRIS. Mr. President, I wonder what the effect both of the language in the House bill and this amendment would be upon a public utility, let us say an electric-light company, owned by a city. Does it have any application to that?

Mr. SMOOT. I will say to the Senator that there is another provision in the bill in which they are exempted entirely.

Mr. NORRIS. I do not want to vote for any provision, either in the bill or in an amendment, that would levy a tax upon a municipality.

Mr. SMOOT. This applies to public utilities where a municipality has an interest in them.

Mr. NORRIS. There are such.

Mr. SMOOT. And there are such. The way the House had it, they would be liable to be taxed for whatever interest they had in that public utility. This amendment relieves them just exactly as the existing law does.

Mr. NORRIS. I was under the impression, just from the reading that I heard at the desk, that there might be a possibility that in connection with the operation, for instance, of electric lights for a city, if owned by the city or if owned partly by the city and partly by a private individual or corporation, there would be a tax to be paid by the city upon its part of the income, provided that income was more than was necessary to defray its part of the expenses of operation.

Mr. SMOOT. There is no tax at all.

Mr. NORRIS. Of course, when a city does anything of that kind, it necessarily wants to make and ought to make some profit out of it in order to lay aside a sinking fund.

Mr. SMOOT. To pay the bonds.

Mr. NORRIS. And also to lay aside a surplus to meet the cost of accidents, and so forth; and I do not want to levy any tax upon any income that goes to a city or a county or a State or any subdivision thereof.

Mr. SMOOT. I will assure the Senator that this provision does not do that; and they are specifically exempted on page 44 of the bill, paragraph (7).

Mr. NORRIS. I will accept the Senator's statement, of course.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Utah.

The amendment was agreed to.

Mr. SMOOT. Mr. President, I now offer the amendment which I send to the desk.

The PRESIDING OFFICER. The Senator from Utah proposes an amendment, which will be stated.

The READING CLERK. On page 274, after line 10, it is proposed to add a new section to read as follows:

SEC. 1131. (a) Section 3195 of the Revised Statutes is amended to read as follows:

"SEC. 3195. When any property liable to distraint for taxes is not divisible, so as to enable the collector by sale of a part thereof to raise the whole amount of the tax, with the costs and charges, the whole of such property shall be sold, and the surplus of the proceeds of the sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for the costs and charges of the distraint and sale, shall be deposited with the Treasurer of the United States as provided in subdivision (b) of section 3210."

(b) Section 3210 of the Revised Statutes is amended to read as follows:

"SEC. 3210. (a) Except as provided in subdivision (b) the gross amount of all taxes, revenues, and collections of whatever nature received or collected by authority of law shall be paid daily into the Treasury of the United States under instructions of the Secretary of the Treasury as internal-revenue collections by the officer receiving or collecting the same without any abatement or deduction on account of the salary, compensation, fees, costs, charges, expenses, or claims of any description. A certificate of such payment, stating the name of the depositor and the specific account on which the deposit was made, signed by the treasurer, assistant treasurer, designated depositary, or proper officer of a deposit bank, shall be transmitted to the Commissioner of Internal Revenue.

"(b) Sums offered in compromise under the provisions of section 3229 of the Revised Statutes and section 35 of Title II of the national prohibition act, sums offered for the purchase of real estate under the provisions of section 3208 of the Revised Statutes, and sur-

plus proceeds in any distraint sale, after making allowance for the amount of the tax, interest, penalties, and additions thereto, and for costs and charges of the distraint and sale, shall be deposited with the Treasurer of the United States in a special deposit account in the name of the collector making the deposit. Upon acceptance of such offer in compromise or offer for the purchase of such real estate, the amount so accepted shall be withdrawn by the collector from his special deposit account with the Treasurer of the United States and deposited in the Treasury of the United States as internal-revenue collections. Upon the rejection of any such offer, the commissioner shall authorize the collector, through whom the amount of such offer was submitted, to refund to the maker of such offer the amount thereof. In the case of surplus proceeds from distraint sales the commissioner shall, upon application and satisfactory proof in support thereof, authorize the collector through whom the amount was received to refund the same to the person or persons legally entitled thereto."

Mr. SMOOT. Mr. President, under the present ruling of the Comptroller General, offers in compromise even though unaccepted are treated as current receipts of the Treasury and, if the offer is not accepted, it requires a refund to return to the taxpayer the amount tendered by him as an offer in compromise. This procedure is unnecessarily complicated and works to the serious disadvantage of the taxpayer whose offer in compromise is rejected by the department. This proposed amendment provides that such offers in compromise shall be placed in the suspense account and if the offer is accepted the amount of the offer shall be covered into the Treasury, but if the offer is rejected the amount thereof shall be paid out of the suspense account and returned to the taxpayer.

The PRESIDING OFFICER (Mr. MOSES in the chair). The question is on agreeing to the amendment proposed by the Senator from Utah.

The amendment was agreed to.

Mr. SMOOT. I offer the following amendment.

The PRESIDING OFFICER. The Secretary will state the amendment.

The READING CLERK. On page 42, line 24, the Senator from Utah proposes to strike out all after the period and to strike out lines 1 and 2 on page 43, as follows:

Items of gross revenue shall be considered to be received in the taxable year in which they are unqualifiedly made subject to the demands of the taxpayer.

Mr. SMOOT. Mr. President, in the House a provision was inserted that items of gross income should be considered to be received in the year in which they are unqualifiedly made subject to the demand of the taxpayer. This ruling was intended to embody in the law the present ruling of the Treasury Department which requires dividends and bond interest to be included in income when it is subject to demand by the taxpayer. It has been found, however, that, although this represents the general rule, there are certain exceptions to it. It is thought desirable, therefore, to strike out the provision and let it go to conference where the proper limitations and exceptions may be placed upon it.

The amendment was agreed to.

Mr. REED of Missouri obtained the floor.

Mr. JONES of New Mexico. Mr. President——

The PRESIDING OFFICER. Does the Senator from Missouri yield to the Senator from New Mexico?

Mr. REED of Missouri. The Senator from New Mexico advises me that he has an amendment to offer which will take but a moment, and I yield to him.

Mr. JONES of New Mexico. The amendment which I propose is to be inserted on page 17, to strike out lines 4 to 17, for the purpose of throwing the subject matter into conference. The language which I move be stricken out is as follows:

(8) If the property (other than stock or securities in a corporation a party to a reorganization) was acquired after December 31, 1920, by a corporation by the issuance of its stock or securities in connection with a transaction described in paragraph (4) of subdivision (b) of section 203 (including, also, cases where part of the consideration for the transfer of such property to the corporation was property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

Mr. SMOOT. I have no objection to allowing the amendment to go to conference.

Mr. JONES of New Mexico. The Senator from Utah realizes the difficulties which pertain to that clause, and it is thought by all of us that it should go to conference.

The amendment was agreed to.

Mr. McKINLEY. Mr. President, I have an amendment to offer.

The PRESIDING OFFICER. The Secretary will state the amendment.

The READING CLERK. The Senator from Illinois proposes to insert the following:

That subdivsion (b) of section 1101 of the revenue act of 1917, as amended, is amended, to take effect 30 days after this act becomes law, to read as follows:

"(b) In the case of the portion of such publications devoted to advertisements the rates per pound or fraction thereof for delivery within the several zones applicable to fourth-class matter shall be as follows (but where the space devoted to advertisements does not exceed 5 per centum of the total space, the rate of postage shall be the same as if the whole of such publication was devoted to matter other than advertisements): For the first and second zones, 1½ cents; for the third zone, 2 cents; for the fourth zone, 3 cents; for the fifth zone, 3½ cents; for the sixth zone, 4 cents; for the seventh zone, 5 cents; for the eighth zone, 5½ cents."

SEC. 2. This act shall not be construed to repeal sections 1102 to 1106, inclusive, of the revenue act of 1917, as amended.

SEC. 3. That nothing in this act shall affect existing law as to free circulation or existing rates on second-class mail matter within the county of publication, or existing rates on second-class mail matter designated as educational, scientific, or charitable.

Mr. EDGE. May I ask the Senator from Illinois if that is an amendment proposed to the pending bill?

Mr. McKINLEY. It is. I understand that this amendment would set the rates back to what they were under the increase in 1919. The result would be that for the first and second zones the charge would be 1½ cents, where it was 2; in the third zone it would be 2 cents, where it was 3; in the fourth zone it would be 3 cents, where it was 5; in the fifth zone it would be 3½, where it was 6; in the sixth zone it would be 4, where it was 7; in the seventh zone it would be 5, where it was 9; and in the eighth zone it would be 5½, where it was 10.

As it is represented to me there have been four raises in rates since the war. This does not set the rates back to prewar rates, but sets them back to those of 1919. The income of 1918 for this matter was $11,717,000. After the raise in 1920 it was $25,100,000. Another raise then brought it up to $25,499,000, and in 1922, with another raise, the income fell back to $25,197,000. In 1923 it had increased about 10 per cent, or to something like $28,000,000.

The result has been that the very high rates have driven the newspapers and the magazines to the railroads and the express companies. The circulation has been reduced, and the people who are particularly affected are the farmers, who receive about 90 per cent of the newspapers and magazines sent by mail.

Mr. SMOOT. Mr. President, I hope this amendment will not be agreed to as an amendment to the pending bill. I think the better way would be to introduce a bill covering this matter, have it referred to the proper committee of the Senate, let them go into the details as to whether it is a good thing to adopt or not, report it to the Senate, and let the Senate act upon it. I have a letter from the Postmaster General in regard to it; but I will content myself at this time by simply saying that the committee has undertaken to keep everything out of this bill of a retroactive nature, and also new legislation that does not affect directly the producing of revenue for the Government.

There is a committee appointed to handle such matters as this. Every change that has been made has been one recommended by that committee, and this one should be considered by that committee rather than have it put upon a revenue bill.

Mr. EDGE. Will the Senator yield?

Mr. SMOOT. Certainly.

Mr. EDGE. I may say, supplementing what the Senator from Utah has said, that the Congress appropriated half a million dollars at the last session for the purpose of enabling the Post Office Department to make an investigation to ascertain the cost of the service in its various departments. I am a member of the Committee on Post Offices and Post Roads, and we have been giving a great deal of consideration recently to the necessity of raising the salaries in the Postal Service. In connection with that, we have likewise considered increasing the revenues. A report which is before the Senate states

that after careful inquiry the committee felt that they did not have sufficient information upon which to base any changes in the rates until the cost ascertainment had been completed.

These changes may be justified. I am not speaking in opposition to the return to the former rates; but I do not feel that the Senate at this time is sufficiently well informed as to the cost of the various departments of the Postal Service to vote intelligently upon the amendment.

Mr. CARAWAY. I gather from the statement of the Senator from Illinois that it is the view of those who have studied the question that this amendment would produce a greater revenue than is produced by the present rates. Therefore I am curious to know what interest the Senator from New Jersey would have in further studying it, if it would increase the revenues.

Mr. EDGE. The interest of the Senator from New Jersey is that he wants to have accurate information. I do not think we are sufficiently informed to justify us in accepting this conclusion without having a report from the Post Office Department in the matter. It is a mere matter of having full business information.

Mr. CARAWAY. Of course I did not intend to insinuate that the Senator was not giving it the kind of intelligent consideration it ought to have, but what I meant to say was that the statement of the Senator from Illinois would indicate that as we have raised the rates we have gotten less revenue. I think all of us will agree that there is a point in a tax bill and a point in a post-office rate which is beyond a figure which will produce revenue. If you make it unprofitable for people to do business, they will not do it. I infer that such a point was reached, from the statement of the Senator from Illinois.

Mr. EDGE. I thoroughly agree with the principle enunciated by the Senator from Arkansas [Mr. CARAWAY] in that last statement—that you can go to a point in taxation where less revenue will be brought in than if the rate is left at a certain modest point. That applies to surtaxes as well.

Mr. CARAWAY. I thoroughly agree with the Senator from New Jersey that that is true.

Mr. EDGE. But on this particular matter I may say in conclusion that I did not rise with the idea of getting into a discussion of the subject at this time, because I frankly admit I am not sufficiently informed. As chairman of the subcommittee dealing with the question, I have asked the Post Office Department for full information. They frankly admitted that they would not be prepared to give full information until about the end of the fiscal year, when they expect to have a complete report showing the result under the appropriations made by the last Congress.

Mr. CARAWAY. Mr. President, I do not want this important matter to get tied up with the question of raising salaries. There ought to be no tax on information. There ought to be the freest circulation of periodicals. The Senator from Illinois made the statement—and I take it he would not have made it unless he had information that warranted him in knowing he is correct—that it largely tends to restrict the circulation of papers in agricultural communities, who more particularly use the post office. For the largest deliveries from city to city they use the express, but publications going into the homes of farmers necessarily must go through the mail, and therefore it is a direct tax at higher rates upon the sources of information of the agricultural communities. I would therefore very much like to see the suggestion of the Senator from Illinois incorporated in the bill. It may not have great relation to it, but it has something to do with the burden of government.

Mr. EDGE. The suggestion of the Senator from Illinois may have great merit, and I do not want to place myself in the position of being opposed to it if the facts were before the Senate upon which we could base a real business judgment. I can only repeat that I think at this time we are not in possession of all the facts and it would be a mistake to add this as more or less of a rider to a revenue producing bill.

Mr. SMOOT. Mr. President, I want to call attention to the total revenues for the years 1919, 1920, 1921, and 1922. Those were the years that were affected by the last change in the law. In 1919 there was an increase of 5.91 per cent over the previous year. In 1920 there was an increase of 19.81 over the previous year. In 1921 there was an increase of 6.02 per cent over the previous year. In 1922 there was an increase of 4.61 per cent over the previous year. There has been no year that there has not been an increase over the preceding year. The amount of the increases in dollars and cents could be given, but we have not the facts, as stated by the Senator from New Jersey, to cover the whole subject matter. I think the facts ought to be had before we adopt such an amendment.

Mr. CARAWAY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Utah yield to the Senator from Arkansas?

Mr. SMOOT. I yield.

Mr. CARAWAY. I realize the sometimes lack of wisdom in trying to inject a schedule or a rate or a matter into a revenue bill when we have not the full matter in our minds. I am making no pretense of being an expert on taxation, but I would like to say this generally: I think it is so important that there be no tax on information, that the people ought to be permitted to get their papers and magazines and the things that come to them at as low a rate as possible, that it would be wise to accept this proposal in the bill, and when the bill is ready that covers salary increases, which the Senator from New Jersey has mentioned, if then it was found to be unwise to have done this, it could be legislated out. But we may not get the opportunity if we do not embrace it now.

Mr. FLETCHER. Mr. President, I want to inquire with regard to the increase. The Senator from Utah gave the information that there had been a certain increase in the revenue from the Post Office Department. The amendment only applies to certain functions of that department, as I understand.

Mr. SMOOT. But the figures I quoted only apply to second-class mail matter.

Mr. FLETCHER. The same as already involved?

Mr. SMOOT. Yes.

Mr. FLETCHER. There is now a proposal to reduce those rates?

Mr. SMOOT. Yes.

Mr. FLETCHER. Has the Senator any information from the department as to what effect that would have on the revenues?

Mr. SMOOT. I have not. The Senator from New Jersey has already stated that we can not get that information until nearly the close of the fiscal year.

Mr. WILLIS. Mr. President, I desire to propound an inquiry to the Senator from Utah [Mr. SMOOT] or the Senator from New Jersey [Mr. EDGE] or the Senator from South Dakota [Mr. STERLING] or some other Senator who can give the information. In common with every other Member of the Senate, I have been having much correspondence from people about rates of postage. It has been my understanding that there is a joint commission or committee that is going into the whole question and carefully examining the facts, and that the commission or committee will be in position to report at some time in the not far distant future. If that is the case, it seems to me the determination of this matter ought to be put off until we have the facts. Is there any such commission?

Mr. STERLING. There is no such commission for that purpose, but it is a matter that should, I think, come before the Committee on Post Offices and Post Roads. The Committee on Post Offices and Post Roads are contemplating even now going into the whole matter of rates. A very comprehensive salary bill has already been reported to the Senate by the Senator from New Jersey, he being at the head of a subcommittee of the Senate Committee on Post Offices and Post Roads having that in charge. In view of the fact that additional revenue will have to be raised for the purpose of meeting the increased salaries provided for in that bill, the Committee on Post Offices and Post Roads will take up and consider the question of rates on the different classes of mail matter.

Mr. WILLIS. Is it not a fact that the Post Office Department itself is now conducting an inquiry to get at the facts in the matter?

Mr. STERLING. Certainly. I am glad the Senator called attention to that point. The Post Office Department is endeavoring to ascertain the cost of carrying, handling, and distributing the different classes of mail. We are waiting for some information from the department on that question.

Mr. McKINLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Illinois?

Mr. WILLIS. I yield.

Mr. McKINLEY. Is it not a fact that the increases in rates have brought in no additional money, that in 1920 the income was $25,000,000, that the increase in 1921 only added $400,000, and that in 1922 it dropped back to $25,195,000; in other words, that the rate is now so high that they do not use the mail for general distribution; but the farmer, who has to use the mails, is compelled to pay the higher increased rates?

Mr. STERLING. I can not quite answer the question whether those are the facts, because I do not know. I have seen no report from the Post Office Department to that effect.

Mr. EDGE. The report is promised to the committee within the next two months.

Mr. CARAWAY. I notice the Senator's statement that they are going into the whole question. The thing I wanted to suggest was that it looked like we might find some source of revenue instead of taxing the source of the information of the people who are compelled to depend upon their papers and magazines. If we are going to increase everybody's wages—and I am expressing no opinion adverse to that—we ought to find some other source of revenue than a higher rate upon periodicals which go to the people residing in rural communities. Then it is exactly where you place it, if you raise or maintain the present high rates on publications.

Mr. STERLING. I appreciate what the Senator from Arkansas said in that regard, and it is a matter that will be considered by the committee. It has already been informally discussed in connection with the question of rates on parcel post whether they should be increased or not, and if so, to what extent.

Mr. CARAWAY. Why would it not be well—at least it would be a fine experiment—to let it go into this bill and see what effect it will have, and by the time the committee is ready to consider the bill to which the Senator from South Dakota has referred we would have some actual information as to what a reduced rate might produce in the way of revenue? I am sure that we could raise the rates until they cease to be productive of revenue, until they dry up the very source from which we collect revenue. That sounds like such good Republican doctrine that it seems to me it ought to appeal to Senators on the other side of the aisle.

Mr. STERLING. The Committee on Post Offices and Post Roads are considering kindred questions; and because they are necessarily interested in providing revenue, it ought to be a subject for that committee to consider. I am opposed to the amendment on that ground, and on that ground alone.

Mr. WILLIS. All I want to say about the amendment is this: It may be if we had an opportunity to ascertain the facts that we all would support the amendment offered by the Senator from Illinois. But it seems to me that the question of the reduction of rates of postage on the different classes of mail matter is so delicate and so important that we ought not to undertake just in an offhand fashion to change those rates. It may very well be, after the matter has been looked into by the Post Office Department and by the Committee on Post Offices and Post Roads, that the rates will be found to be reasonable and equitable and just, but it seems to me it is not a good way to transact the public business here upon a great bill upon another subject to undertake to adjust postal rates.

Because of the lack of information, because of the fact that the Committee on Post Offices and Post Roads is now giving attention to the matter and that it is a subject properly belonging to that committee, and because the Post Office Department itself is at the present time conducting an important inquiry to get at the facts so we may pass a just bill, it seems to me it would be unwise legislation to adopt the amendment in this form.

Mr. McKINLEY and Mr. HARRISON addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Ohio yield; and if so, to whom?

Mr. WILLIS. I yield first to the Senator from Illinois.

Mr. McKINLEY. If the amounts of money received in 1920, 1921, and 1922 were all practically the same, and in the meantime there have been two raises which fall practically altogether on the farmer, who has to receive this matter through the mails, would it not be well to put the rate back? It makes no difference in dollars and cents. Would it not be better to put it back to the lower rate?

Mr. WILLIS. If the Senator were absolutely sure of all the matters he alleges as facts, that might be true; but, I repeat, there has been no report upon the matter, and the question of postal rates on the different classes of mailable matter is a very delicate and difficult thing. It is a difficult matter to appraise the elements of cost entering into the transportation of the mails.

My point is that in the consideration of a great bill relating to another subject it is unwise legislation to bring in an amendment that may have very important results that can not now be perceived.

Mr. HARRISON. Mr. President, will the Senator now yield to me?

Mr. WILLIS. I yield the floor. That is all I wanted to say on the subject.

Mr. HARRISON. Before the Senator takes his seat may I ask him a question?

Mr. WILLIS. Certainly.

Mr. HARRISON. We have taken the tax off of telegrams and telephone messages, off of automobile parts, off of motion pictures to a certain extent, and refused to tax radios and radio parts. No report was had in reference to those matters. It is merely a question of removing a tax in a bill that seeks to reduce the taxes on the people. This reduction of rates to a pre-war basis, as I understand the amendment, only carries out the theory that we were following with reference to telegraph and telephone messages, motion pictures, radio parts, and so on.

Mr. WILLIS. The Senator, of course, understands that there is quite a difference in the cases he cites. The question of the adjustment of postal rates on the different classes of mail matter is quite a different thing from a tax upon a radio receiver or an automobile.

Mr. HARRISON. I do not care whether the term "rates" or "taxes" be used; it means the same thing.

Mr. WILLIS. I yield the floor, Mr. President.

Mr. WADSWORTH. Mr. President, without pretending to be an expert on this question, let me observe that from the beginning I have never had any admiration for the zoning system of postal rates as applied to newspapers or to any other publication carrying information; but we have had it for some years, and I suppose it will be some years before we can get rid of it.

There is no doubt whatsoever, Mr. President, that the present rates are too high. The more prominent publications of the country are to a great extent excluded from getting subscriptions from persons living in the eighth, ninth, and tenth zones. The cost of postage when the publication is carried to that distance is so great that the newspaper or the magazine can not pay it and still sell the publication at its ordinary subscription rates to the recipients. I have a letter here from one of the managers of a great metropolitan daily in which is brought to my attention the effect of some of these high rates. I beg leave to read extracts from that letter, especially for the information of members of the Committee on Post Offices and Post Roads, for to me the thing seems perfectly simple to understand. This letter states:

> The present rates—war taxes—imposed on the newspapers in the revenue act of 1917 are excessive and unjust both in themselves and by comparison with rates for other classes of postal matter.
>
> The Post Office Department actually loses revenue by these prohibitive rates, the newspapers being forced to use express, baggage, and automobile services wherever possible. This paper alone for these services pays from $200,000 to $300,000 annually, which formerly went to the post office.

I interpolate that it makes no money for the Government when we drive these publications out of the Postal Service as a means of distribution.

> The imposition of postal rates which seriously curtail the circulation of newspapers in other sections of the country than their own is contrary to public policy and national interest.

To that statement I heartily subscribe.

Mr. CARAWAY. The high rates actually prevent people from being able to get newspapers and periodicals which are published in other sections of the country, so that they may keep abreast of the common thought.

Mr. WADSWORTH. I have suspected that that was the principal reason back of the original zoning plan. This letter continues:

> New York newspapers are more concerned than those of other States because its newspapers are more national in their character and circulation.

I think that can not be truthfully denied. I think you will agree that an increased circulation of New York newspapers is not a bad influence in our national affairs.

> The postal rates on newspapers under the zone law are 1½ cents per pound on news matter and from 2 to 10 cents per pound on advertising matter. These rates are 250 per cent higher than the old rates. This paper pays in the neighborhood of $400,000 a year more than under the old second-class rate.

And remember, Mr. President, that in addition to that $400,000 a year this one newspaper pays between $200,000 and $300,000 for automobile, baggage, and express service in order to reach the more distant zones.

> Newspaper rates are the only postal rates increased since the war to a point higher than they were either before or during the war. This increase, too, in the face of practices adopted by the newspapers which enable the post offices to handle newspapers at less expense proportion-

ately than any other class of mail. The newspapers save the Post Office Department all terminal and routing expenses of every kind. On the bulk of newspaper mail in the first and second zone the services performed by the Post Office Department are no more than simple baggage services. Newspaper mail does not go through the post office either at the shipping point or at destination, being delivered by the publisher at the terminal and taken by the newsdealer on arrival; yet the lowest present newspaper rate of the Post Office Department is $2 a hundred pounds; the express rate within 500 miles, covering three postal zones, is $1 a hundred, and the baggage rate 30 to 60 cents.

How can we expect the newspapers to use the mails when they get other service at half the price? No wonder the revenue of the Post Office Department shows no increase worthy of the name, in spite of a doubling of the pre-war rates on newspapers.

Mr. McKINLEY. Mr. President, will the Senator yield?

Mr. WADSWORTH. I yield.

Mr. McKINLEY. Is it not also unjust in this respect that the farmer must use the mail and can not get the advantage of the low baggage and express rates of which those who live in the city have the benefit?

Mr. WADSWORTH. I think that is true; I think the present system operates to provide unequal distribution of reading matter for which the entire American people have a real need.

Mr. GERRY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Rhode Island?

Mr. WADSWORTH. I yield.

Mr. GERRY. Can the Senator tell us whether the former second-class mail rates were remunerative? Did they pay for the expense incurred?

Mr. WADSWORTH. I have not those figures with me. I know that the increase in the rates has not increased the revenue.

Mr. GERRY. But, independent of that, what has been the result?

Mr. SMOOT. There has been an increase in revenue.

Mr. WADSWORTH. The increase is not worthy of the name.

Mr. SMOOT. I have just stated the amount and given the percentages by which the revenues have been increased over the preceding years.

Mr. WADSWORTH. Does the Senator believe that a doubling of postage rate which increases the revenue only 4 per cent is good business?

Mr. SMOOT. The Senator from Utah has not said that at all, and those are not the facts in the case.

Mr. WADSWORTH. I thought I heard the Senator read that in one year the receipts increased 4 per cent over the preceding year?

Mr. SMOOT. In 1919 the increase was 5.19 per cent, in 1920 it was 19.81 per cent, in 1921 it was 6.02 per cent, in 1922 it was 4.61 per cent. All those percentages represent increases over the year preceding. So there has been an increase beginning in 1919 of 5.91 per cent over the preceding year, of 19.81 per cent the next year, of 6.02 per cent the next year, and of 4.61 per cent the next year. I will say that I think the whole question ought to be settled, and if the Post Office Committee finds that the rates ought to be decreased I will vote for such a decrease, no matter what may come, if it is right; but this is not the proper place to provide for such legislation.

Mr. WADSWORTH. That is a question of policy, but I am endeavoring to place before the Senate, probably in an inadequate way, certain facts as they affect some of the publications of the country. This is not the first time this question has been discussed in the Senate. I have been here for more than nine years, and I have heard it discussed most exhaustively at least three times, and every discussion has resulted, as I recall, in maintaining the increased rates, and no good has been done by it.

Mr. EDGE. Mr. President, is the fact that there has not been any increase in income conclusive that the higher rates have brought about that result? In other words, we are now comparing, as I recall the figures of the Senator from Illinois, the present conditions with those before the war. I am not entirely informed, but there is a question in my mind if this type of publications has been as freely distributed, whether by one kind of carrier or another, since the war. In order to form a definite conclusion we must have all the facts. I do not know, but it seems to me we can not merely accept the gross amount of income as being entirely conclusive.

Mr. WADSWORTH. Mr. President, if the statement made by the Senator from Utah a while ago that the increase in receipts one year over another has apparently, as I recall, averaged from 4 to 6 per cent is correct, and that state of affairs is the result of having doubled the postage rates on a certain class of mail matter, I claim that doubling the rates is a failure.

Mr. CARAWAY. May I ask the Senator a question?

Mr. WADSWORTH. Certainly.

Mr. CARAWAY. The question of expediency has been raised by the Senator from Utah. We struck the tax off telegrams and telephone messages because they were sources of information. If it were appropriate to strike the tax off of those instrumentalities, why would it not be appropriate to relieve second-class mail matter, which is a source of information, from the extra burden it carries? Is there not an analogy between the two?

Mr. WADSWORTH. I think, other things being equal, that is a logical conclusion. I do not think that a reduction in postal rates will reduce the revenue, because I think there would be many more pieces of mail carried.

Mr. CARAWAY. It would certainly tend to disseminate information.

Mr. WADSWORTH. I have referred to one newspaper alone that spends between $200,000 and $300,000 annually to get its newspapers into a portion of the country where the postal rates are prohibitive. Why not have the Post Office Department get some of that money? That is my contention.

Mr. EDGE. I do not think that result follows in the case of the parcel post, as I believe the Senator will agree, if he will investigate it. The parcel-post rates to-day, in my judgment, would stand a considerable increase and the revenues of the Government would be greatly increased thereby.

Mr. WADSWORTH. I do not think the Senator would insist that a newspaper should be delivered by parcel post. That service would scarcely be worth while for the delivery of a daily newspaper.

Mr. McKINLEY. Mr. President, I ask for the yeas and nays on the amendment.

Mr. DIAL. Mr. President, from the information I have, this amendment ought to be adopted. If it shall not be adopted now, it will be a long time before the parties who are entitled to its benefits can possibly receive them. It is true the department is looking into this matter, but certainly another session will intervene before we can secure a report.

In my section of the country large quantities of newspapers and periodicals are being delivered by trucks instead of being carried through the mail, and, as a consequence, the Government is losing the postage which would otherwise be derived. I trust that the amendment will be agreed to.

The PRESIDENT pro tempore. The question is on the amendment proposed by the Senator from Illinois.

Mr. McKINLEY. I ask for the yeas and nays.

Mr. HARRISON. Let us have the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. LODGE (when his name was called). I have a general pair with the Senator from Alabama [Mr. UNDERWOOD]. I transfer that pair to the Senator from Vermont [Mr. GREENE], and will vote. I vote "nay."

The roll call was concluded.

Mr. COLT. Has the junior Senator from Florida [Mr. TRAMMELL] voted?

The PRESIDENT pro tempore. That Senator has not voted.

Mr. COLT. I have a pair with that Senator. I transfer that pair to the senior Senator from West Virginia [Mr. ELKINS], and will vote. I vote "nay."

Mr. GLASS. Being a newspaper publisher, and therefore pecuniarily interested in the result of this vote, I withhold my vote.

Mr. OVERMAN (after having voted in the affirmative). I observe that my pair, the senior Senator from Wyoming [Mr. WARREN] is absent. I transfer that pair to the Senator from Texas [Mr. MAYFIELD], and will let my vote stand.

Mr. COPELAND. I desire to announce that if the junior Senator from New Jersey [Mr. EDWARDS] were present, he would vote "yea."

Mr. SIMMONS (after having voted in the affirmative). I transfer my general pair with the junior Senator from Oklahoma [Mr. HARREL] to the junior Senator from New Jersey [Mr. EDWARDS], and will let my vote stand.

Mr. FLETCHER (after having voted in the affirmative). I transfer my general pair with the Senator from Delaware [Mr. BALL] to the Senator from New Mexico [Mr. JONES], and will let my vote stand.

Mr. GERRY. I desire to announce that the Senator from Oklahoma [Mr. OWEN] is paired with the Senator from Illinois [Mr. McCORMICK].

Mr. CURTIS. I desire to announce the absence of the junior Senator from Wisconsin [Mr. LENROOT] on account of illness.

The result was announced—yeas 55, nays 18—as follows:

YEAS—55

Adams	Ernst	Ladd	Shields
Ashurst	Fernald	McKellar	Shipstead
Bayard	Ferris	McKinley	Simmons
Brandegee	Fletcher	McNary	Smith
Brookhart	Frazier	Moses	Stanfield
Broussard	George	Neely	Stephens
Bruce	Hale	Norbeck	Swanson
Bursum	Harris	Oddie	Wadsworth
Cameron	Harrison	Overman	Walsh, Mass.
Caraway	Heflin	Ralston	Walsh, Mont.
Copeland	Johnson, Calif.	Ransdell	Watson
Dale	Johnson, Minn.	Reed, Mo.	Weller
Dial	Keyes	Robinson	Wheeler
Dill	King	Sheppard	

NAYS—18

Borah	Gerry	Norris	Spencer
Colt	Gooding	Pepper	Sterling
Curtis	Jones, Wash.	Phipps	Willis
Edge	Kendrick	Reed, Pa.	
Fess	Lodge	Smoot	

NOT VOTING—23

Ball	Glass	Lenroot	Shortridge
Capper	Greene	McCormick	Stanley
Couzens	Harreld	McLean	Trammell
Cummins	Howell	Mayfield	Underwood
Edwards	Jones, N. Mex.	Owen	Warren
Elkins	La Follette	Pittman	

So Mr. MCKINLEY's amendment was agreed to.

Mr. TRAMMELL subsequently said: Mr. President, I was temporarily absent from the Chamber on official business at the time the vote was taken on the McKinley amendment to the revenue bill. I desire the RECORD to show, however, that I was paired with the Senator from Rhode Island [Mr. COLT]. That pair was observed, and was stated when the vote was taken, but I also desire to state that I was in favor of the amendment and should have voted for it had I been present and permitted to vote.

Mr. MOSES. Mr. President, I offer the amendments which I send to the desk and ask to have stated.

The PRESIDENT pro tempore. The amendments will be stated.

The READING CLERK. To section 214, subsection 10, add as subsection (B):

(B) In the case of lands managed for the production of crops of timber all expenditures pertaining to such management, including expenditures for protection, taxes, administration, planting, culture, et cetera, or at the option of the owner acting consistently from year to year, such expenditures may be capitalized: *Provided*, That in the case of such expenditures for planting and/or culture there may be deducted in any one year not to exceed $15,000 or 15 per cent of the net income of the taxpayer computed without the benefit of this subsection, whichever is greater. If and to the extent that such expenditures are capitalized they shall be added to and shall form a part of the basis used in the determination of depletion, or of gain or loss from sale, exchange, destruction, or other disposal of the timber to which such expenditures pertain.

To section 214, subsection 10, add as subsection (C):

(C) One-half only of the net income resulting from and allocable to the conversion, utilization, sale, or other disposal of timber from or together with lands managed in good faith for the production of crops of timber shall be used in determining the net income subject to tax: *Provided*, That this subsection shall apply only to trees left for seed, to trees left for further growth, and/or to second-growth timber produced by natural and/or artificial means.

Mr. SMOOT. Mr. President, the object of this amendment is to encourage reforestation, in order that the forests of the country shall not be depleted and that a system of reforestation shall be established in the United States. The amendment is designed to encourage that which everybody in the United States desires to have encouraged; and I have no objection to the amendment.

Mr. KING. Mr. President, I should like to ask the Senator from New Hampshire if he has any estimate as to the probable cost or diminution of revenue to the Government, and the probable number of those who may take advantage of the provisions of this amendment?

Mr. MOSES. Mr. President, that is an estimate wholly impossible to obtain; but the opinion of the Select Committee on Reforestation, as a result of whose labors these amendments were produced, is that the amount of money involved to the Federal Treasury will be comparatively slight.

The great benefit which is sought to be obtained from these amendments is to set an example for State legislation along these lines. The Select Committee on Reforestation discovered two principal elements militating against the extension of the forest cover and operating very directly upon the destruction of the forest cover, to wit, the depredations by fire and the excessive carrying charge necessitated by taxes upon timberlands.

The constant effort of the committee as it journeyed about the country taking testimony was to exert persuasion upon local forest authorities, upon local tax authorities, upon members of legislatures, as the committee came in contact with such, to the end that the State taxation laws should be so drawn as to encourage the growing of timber as a crop, so that the country might be assured of a constant supply of this most useful material and fast-disappearing material, I may add; and it was deemed by some of us on the committee that if the Federal Government was to seek to apply pressure upon local legislative groups to that end it was certainly incumbent upon the Federal Government itself to do something with its own tax laws to show good faith and to set an example of the type of legislation which might produce this result.

Mr. KING. Mr. President, I thank the Senator for his response to my inquiry, and I desire to submit one or two observations apropos of his statement.

Many laudable and altruistic purposes are projected from time to time, for which, of course, only words of commendation should be uttered; but this seems to me to be a scheme—and I do not use the word at all offensively—a project to use the taxing power for the purpose of securing a result which all would concede to be beneficial. It is a matter of fact that too little attention has been paid by the States to the question of reforestation, as a result of which we are lacking in some parts of our country in an adequate timber supply, and doubtless unless some steps shall be taken by the States in a few years we may be lacking in many species of timber which are very necessary, if not indispensable, in our industrial and economic development.

However, may it be said, for many years, particularly since Mr. Roosevelt began talking about conservation of natural resources, the cry has gone out almost constantly that next year or the year following would see an end to our coal supplies and our timber supplies. We now find that we have coal enough to last for millions of years. I concede that our timber supply in a few years will be inadequate; but the point I am trying to make is that we too often use the taxing power—which ought to be used only for the purpose of getting revenue, and only revenue sufficient for the purposes of the Government—to accomplish some other object. We accomplish in an indirect way that which is not permissible if we properly interpret the taxing power of the Government.

Under the taxing power of the Government we have done many things that could only be justified as a police measure, if Congress had the power, and it did not have it. We have converted the taxing power of the Government into a basis for police regulations. That is mere general observation.

In this particular instance the able, conscientious worker, the Senator from New Hampshire, seeks to increase the reforestation of certain lands of our country by the use of the taxing power of the Government. It is true we do not tax, but we create exemptions. It was argued here the other day with very great force by the Senator from Missouri and the Senator from Arkansas and other able Senators that when we denied certain exemptions with respect to the dividends derived from tax-exempt securities, it was direct taxation, or, rather, discrimination against them, and was a species of direct taxation. So now we invoke the taxing power of the Government for the promotion of reforestation. That there should be reforestation goes without saying. How shall it be accomplished? Obviously, not by indirect methods—by the application of the taxing power of the Government.

The chairman of the committee, however, has accepted the amendment for the committee, and I suppose it will go to conference. I only want to express my dissent from the proposition that we may use the taxing power of the Government for the purpose of accomplishing objects, no matter how worthy and meritorious, which may not in a proper interpretation of the Constitution be undertaken by the Federal Government.

Mr. CARAWAY. May I ask the Senator a question?

Mr. KING. I yield to the Senator.

Mr. CARAWAY. It strikes me that we have used the taxing power for so many evil purposes, if we find some worthy purposes the Senator ought not to object to it.

Mr. KING. I think there is very much in what the Senator says.

Mr. MOSES. Mr. President, I quite agree with what the Senator from Utah has said about the various methods of embroidery which have been applied to the taxing power, and to other functions of the Government. Nobody who has witnessed the course of legislation here and in the State capitals would

hesitate for a moment to share fully all the views expressed by the Senator from Utah as to the departures which have been made by the lawmaking bodies from the purposes of the founders.

The Senator called attention to one or two things. I was amazed that he did not point out how we are gradually making the organic law, not only of the country but of the States, a mere collection of police regulations.

However, Mr. President, I have been very much surprised that the Senator from Utah should have chosen this particular piece of legislation as a basis for the observations which he advanced, because in the labors of the select committee on reforestation, taking testimony, as that committee did, in more than half of the States of the Union, in each of the States where the forest problem presents itself in any acute manner it became our duty to study the body of State legislation connected with this whole problem of reforestation, and we found that a few States had taken advanced positions regarding the taxation of timberlands to the end of supplying to themselves as constant a supply of timber material as might be had from their remaining forest area. It so happened that two of the States which had acted in this enlightened manner were the State of Utah and the State of New Hampshire, where legislation exactly of the character proposed here had been enacted.

The legislation in force in Utah was drawn by the distinguished Senator from Utah some years ago, and the legislation in force in the State of New Hampshire was drawn by the more humble Member of this body now addressing the Chair.

Mr. KING. Will the Senator yield?

Mr. CARAWAY. Permit me just to say this, that I was for the measure, but I hope Senators will permit me to withdraw. [Laughter.]

Mr. KING. I think perhaps the first bill I had the honor of introducing in the legislature, when I was younger than I am now, was a bill which was proper under the power of the State in dealing with local and domestic affairs. That bill gave certain credits to farmers and to other landowners against their taxes proportioned to the number of trees of a certain character which they would plant. I am glad to say that the act was quite beneficial, and a number of States took advantage of the example set by that very young State; and I think it has been of considerable advantage. But the power of the Federal Government to tax is one thing, and the power of the State is another.

Mr. MOSES. Quite true, Mr. President; but one conclusion which was constantly and most forcibly brought to the attention of the Select Committee on Reforestation was that the question of assuring a timber supply for the country was passing out of the zone of State influence and authority and was becoming a purely national problem. In other words, watching the progress, the movement westward, of the center of the lumber industry, first from New England, thence to the Hudson River, thence to Michigan, thence to the Northwest, and now on the edges of the Pacific coast, having come to the jumping-off place, when there is no further movement for it to make in the western direction, the problem becomes one which the National Legislature most properly can attack. The views which the committee found enforced upon them, no matter what might have been their initial opinions when they undertook the inquiry, were views that brought us to realize that the Federal Government must take affirmative steps by increasing its activity in the line of fire protection, of the extension of the public forests, in the higher utilization of the timber territory of the public lands and of the national forests, and in pointing the way for the State legislatures so to reform their statutes that the element of taxation might be brought in as a considerable incentive and inducement toward the growing of timber as a crop.

Believing as I did about the subject, I could see no other way in which the Congress could undertake such action for the benefit of the States and for the encouragement of the States, and looking toward the solution of this problem, which I regard as wholly national, and which I know to be growing more acute, than to present an amendment to this bill, so as to set up a standard to which the State legislatures might repair, and I am very glad the chairman of the committee takes that view of it and accepts the amendment.

Mr. HARRISON. Mr. President, there seems to be such strong sentiment for the amendment offered by the Senator from New Hampshire, who has given much study to this important question of reforestation, that I merely desire to say——

Mr. MOSES. The Senator himself was a member of the committee.

Mr. HARRISON. I simply desire to say, as a member of the committee when this matter was broached, I was one of the members of the committee who voted against the proposition, and consequently I shall vote against the amendment at this time.

The PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. SHIPSTEAD. Mr. President, I offer the amendment which I send to the desk.

The PRESIDENT pro tempore (Mr. CUMMINS). The Secretary will state the amendment.

The READING CLERK. On page 252 the Senator from Minnesota moves to insert the following after line 16:

SEC. 1113 A. A refund or abatement of taxes paid or assessed or to be assessed under the revenue act of 1916, the revenue act of 1917, the revenue act of 1918, and the revenue act of 1921, subject to the limitations therein provided, shall be granted to any farmers' or other mutual hail, cyclone, or fire insurance company if otherwise exempt under paragraph 10 of section 11(a) of the revenue act of 1916 and the revenue act of 1917, and paragraph (10) of section 231 of the revenue act of 1918 and the revenue act of 1921, without any requirement that such above-mentioned organization be of a purely local character.

Mr. SHIPSTEAD. Mr. President, this amendment means so much to the farmers' mutual fire, hail, lightning, and tornado insurance companies, having over $10,000,000,000 of insurance in 18 States, that I am going to ask the indulgence of the Senate for a few minutes while I explain the amendment.

This amendment proposes to refund or abate taxes paid or assessed, or to be assessed, under the revenue laws of 1916, 1917, 1918, and 1921, to farmers' or other mutual hail, cyclone, or fire insurance companies, under certain conditions.

No doubt you will be under the impression from the reading of this amendment that it involves a refund of large sums of money from the Treasury, but such is not the case, as I shall show later. No doubt it will occur to you at once that this amendment would be retroactive, and would excuse certain companies from paying a large amount of income tax that should have been paid a long time ago. I shall endeavor to show that this amendment is not retroactive, but a provision that will repeal a retroactive ruling recently made by the Commissioner of Internal Revenue, the effect of which ruling is that over 2,000 purely mutual insurance companies which ever since 1916, until recently, have been held by repeated rulings not to be subject to an income tax, are now called upon to pay income taxes, heavy penalties, and interest from the year 1916 up to the present time. Under these circumstances this amendment can not be said to be retroactive, but simply a provision to prevent the Commissioner of Internal Revenue from carrying out a retroactive ruling that has the force of law, compelling these insurance companies to pay a so-called income tax for the eight years last past.

Mr. SIMMONS. When was the ruling to which the Senator has referred made?

Mr. SHIPSTEAD. About a year ago.

Mr. SIMMONS. The law had been the same as it was under the acts of 1916, 1917, and 1918, and no tax had been assessed against these companies? Were there any rulings of the Secretary of the Treasury that they were not subject to tax?

Mr. SHIPSTEAD. Oh, yes; the question had been ruled upon by the Treasury from year to year.

Mr. SIMMONS. The tax had not been collected because the Secretary of the Treasury ruled that they were not subject to tax?

Mr. SHIPSTEAD. I shall cover that.

Mr. SIMMONS. I simply wanted to understand what the Senator said.

Mr. SHIPSTEAD. The Senator is correct.

Mr. SIMMONS. Now, without any recent change in the law, about a year ago the Secretary reversed himself and now holds that the companies are subject to tax under these several cases?

Mr. SHIPSTEAD. Yes. The Senator is correctly informed.

Before the adoption of the revenue law of 1916 representatives of 10 leading mutual insurance companies appeared before the House Ways and Means Committee and presented their claims as to why they should be exempt from paying any income taxes on their receipts. It must be borne in mind that the income of farmers' mutual insurance companies consists solely of assessments, dues, and fees collected from members for the sole purpose of paying their losses and expenses and that no profit whatever is made by the company itself. The

House Ways and Means Committee agreed that these mutual insurance companies should be exempt, and the following provision was placed in the revenue law of 1916:

SEC. 11 (a). That there shall not be taxed under this title any income received by any—

* * * * * * *

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses.

Under the interpretation then made of the law the farmers' mutual insurance companies were exempt as long as their income consisted solely of assessments, dues, and fees used for the sole purpose of meeting expenses, and it seems to me that this is the only reasonable interpretation that can be placed upon this law.

Practically the same exemption was incorporated in the 1917 revenue act as well as the revenue acts of 1918 and 1921. Under these laws the office of the Commissioner of Internal Revenue issued rulings from time to time, and letters to practically all the companies, holding that as long as the income came from the sources and were used for the purposes mentioned in said act or acts, the companies were not liable for any income taxes. I will give a brief statement as to the rulings:

I will say to the Senate that I have gone in great detail into the history of the rulings and revenue acts as affecting these companies in order to clear up the confusion that seems to have prevailed concerning this form of legislation.

The first regulations relating to the exemption of mutual insurance companies under the revenue act of 1916 are as follows:

Regulation 33, article 69, page 51, issued in 1918:

ART. 69. Mutual insurance companies, etc.: The organizations mentioned in paragraph "tenth" of section 11, act of September 8, 1916, as amended, are specifically exempt provided that their entire income consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses incurred in pursuance of the purpose for which organized. If any of such organizations have income from any other source other than assessments, dues, and fees, such income will be held to be subject to tax, and the organizations receiving the same will be required to make returns and to pay any tax thereby shown to be due.

Regulation 45, 1919 edition, contained in article 521 the following sentence:

The phrase "of a purely local character" qualifies "only like organizations."

Regulation 45, 1920 edition, as issued by the Treasury Department, contained in article 521 the same sentence.

Regulation 45, 1921 edition, contained the same sentence in article 521, adding the following explanatory matter:

An organization of purely local character is one whose business activities are confined to a particular community, place, or district, irrespective, however, of political subdivisions.

The word "purely" intensifies and limits "local," and indicates a clear intention on the part of Congress to exempt from taxation only such "like organizations" as are entirely and unqualifiedly "local" in their operations.

The exemption of the 1921 law is as follows, almost word for word the same as the 1916 provision:

SEC. 231. That the following organizations shall be exempt from taxes under this title:

* * * * * * *

(10) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting expenses.

The new official interpretation of this paragraph which causes all this trouble is found in article 521, regulation No. 62, and the part of which article that affects farmers' companies or changes certain rulings as to farmers' companies is as follows:

An organization of a "purely local character" is one whose business activities are confined to a particular community, place, or district, irrespective, however, of political subdivisions. The word "purely" intensifies and limits "local" and indicates a clear intention on the part of Congress to exempt from taxation only such organizations as are entirely and unqualifiedly "local" in their operation.

That is the ruling that has caused all the trouble. The ruling of the commissioner entirely repeals all former rulings made with reference to these companies during the six years following the adoption of the revenue laws of 1916.

Let us analyze more fully the difference between this ruling and all prior rulings.

Mr. JONES of New Mexico. Will the Senator state the date of that ruling?

Mr. SHIPSTEAD. I have not the date here. I got the ruling out of the Treasury regulations for 1922.

Mr. JONES of New Mexico. I wanted to know the date of the ruling, when they changed their interpretation.

Mr. WATSON. My recollection is it was about two years ago.

Mr. SIMMONS. I think it was in 1922.

Mr. SHIPSTEAD. The regulations issued by the Treasury Department do not always carry the date of each individual ruling. The pamphlet or booklet contains the rulings of the Treasury Department on the revenue act of 1921 and the regulations issued in 1922.

Mr. WATSON. If the Senator will permit an interruption, Mr. Gregg, of the Treasury Department, informs me the ruling was made February 15, 1922.

Mr. SHIPSTEAD. I thank the Senator.

It will be noticed that in said section 10 that certain companies are specifically enumerated, namely:

1. Farmers' or other mutual hail, cyclone, or fire insurance companies.
2. Mutual ditch or irrigation companies.
3. Mutual or cooperative telephone companies.

Then comes a general clause "or like organizations of a purely local character." Next comes another modification as to all the classes of companies previously named which is this—

the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses.

In construing this law prior to the regulation of 1922, the Revenue Department held, and correctly held, that the words "like organizations of a purely local character" did not modify or qualify any of the companies previously particularly enumerated in said section. In other words, when the question as to whether or not a farmers' mutual fire insurance company was exempted from an income tax, the only words of said section that were held applicable to said company would be the following:

Farmers' mutual fire insurance company the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expense.

In other words, it was held that the words in said section "of a purely local character" did not apply to a farmers' mutual fire insurance company, but that the words "of a purely local character" would apply only when a company that was not specifically enumerated in said section should come and claim exemption under said act on the ground that they were a "like organization."

The only judicial authority that the Commissioner of Internal Revenue relies on for changing this ruling is the decision of a United States district judge in the case of Commercial Health and Accident Co. *v.* Pickering, reported in 281 Federal Reporter at page 539, which case was decided on January 3, 1922. This was a case in which a mutual life insurance company doing business throughout the entire State of Illinois sought to be exempted from income taxes under paragraph 10 on the ground that they were "a like organization" to the companies particularly enumerated in said section 10.

The words "of a purely local character" modify or qualify the words "like organization" and all the learned district judge had to decide in the case and the only question that was up before him for judicial determination was whether or not the company was a "like organization" so as to come within the income-tax exemption given by said paragraph to the companies particularly enumerated, such as farmers' or other mutual hail, cyclone, or fire insurance companies, and so forth. But the learned judge went further than merely to decide the issue before him and attempted by obiter dicta to define the law applicable to all companies enumerated in said section, although that was an entirely irrelevant question and not involved in the case that was up before him for decision. The learned judge said:

We do not believe that it was the intention to exempt farmers' or other mutual hail, cyclone, and fire insurance companies, etc., generally, but only such as are of a purely local character.

But the court went further than that and said, "a proper reading of this paragraph—referring to said paragraph 10—

requires the interpolation of a comma after the words 'like organization.'" When courts go so far as to interpolate commas or otherwise change the punctuation of an act of Congress in order to get an excuse for deciding a case a certain way, then I do not think that the amendment is open to the charge that it proposes a retroactive law.

This new ruling very seriously affects farmers' mutual fire insurance companies which have sprung up all over the United States since the year 1825. Bulletin No. 697, issued by the Department of Agriculture, shows that in the year 1916 there were nearly 2,000 farmers' mutual insurance companies in the United States, which carried insurance for more than five and a quarter billion dollars and these companies have been held out to the people by the Agricultural Department, by farm journals, and political orators as an example of what can be accomplished by real cooperation and as indicating that cooperation will cure all the ills of the farmer. I quote the following from that bulletin:

The marked success of this form of cooperation has also been an encouragement to farmers to attempt other cooperative enterprises. It has stimulated their faith in one another and strengthened their confidence in their own ability to do things somewhat removed from their primary occupation of raising crops and producing other raw materials. If farmers could manage successfully their own insurance company and save money in so doing, why could they not make their own milk into butter and cheese, provide themselves with fresh beef by the organization of so-called meat rings, operate their own telephone company, market some of their own farm products, and even purchase cooperatively some of their needed supplies?

What have these companies accomplished? They have provided a good, reliable system of insurance at a cost of about 15 cents per hundred dollars a year, generally collected by an assessment based upon their losses. I have a statement showing that the insurance charged by a stock company upon a farm in a certain locality is $1.45 per $100 for a term of three years, while the assessment in the farmers' mutual insurance company, operating in the same neighborhood, has amounted in three years to 45 cents per $100, representing a clear saving of $1 per hundred.

How is this accomplished? Not by refusing to pay losses, but by cutting down expenses to the minimum. Laws have been passed in nearly all the States providing for a simple form of incorporation, under which the usual costs are from $1 to $1.50 for recording the articles. When a farmer takes out insurance he lists the property that he wants insured and signs an undertaking that he will pay his pro rata share of all losses incurred by other members of the company. The usual officers, such as president, secretary and treaurer, and a board of directors, are provided for in their articles and the laws of the State in which they operate. The secretary's office usually consists of a writing desk in the corner of a sitting room in a small farmhouse, and the furniture and fixtures belonging to the company generally consist of an iron safe and a small writing desk. No large commissions are paid to agents for soliciting and selling insurance. This work is generally performed by a member of the board of directors, who receives a fee of about $1 for drawing an application. Losses are adjusted by a committee of directors, who receive a small fee per diem for the actual time spent in the service of the company.

I have before me a statement of the White Bear Lake Insurance Co., of Pope County, Minn., a company with which I am well familiar, having lived for over 18 years in the territory in which it operates. The statement shows that in the year 1921 that company had in force 2,411 policies and $12,503,432 in insurance; that they paid for president's salary $200; for secretary's salary, $735.60; for treasurer's salary, $388.86; and to the directors for writing insurance and other services, $1,389.45, making a total of $2,713.91 for salaries and officers' fees paid in a company that carried over $12,000,000 insurance. The cost of insurance for that year was 15 cents per hundred.

Mr. President, as I said in the beginning, there are four and one-half million farmers in 18 States carrying insurance amounting to over $10,000,000,000. By the adoption of this amendment those policyholders will be protected. The ruling which was rendered by the Treasury Department could only have been rendered on one ground. The object of the income tax law is that profits and incomes shall be taxed and not to tax losses and misfortunes. These companies are not organized for profit; they have no income except that which is assessed with which to pay losses. By this ruling of the Treasury Department money has been and is being collected now from those farmer insurance companies contrary to the whole intention of Congress. The adoption of the amendment will serve to protect those companies from this illegal ruling, and will refund to those farmers the money which has been collected from them under that ruling of the Treasury Department.

Mr. WATSON. Mr. President, in the committee I offered this amendment and it was rejected. I am always regular and loyal to my committee, and I very much dislike to run counter to its wishes, but I think that there is no justification for the Treasury Department ruling which has been read by the Senator from Minnesota. It grows out of what I believe to have been an erroneous decision by the department which was made in February, 1922.

The whole thing turned on the question of interpretation of the words "purely local character," which I shall not discuss, for in considering the question the committee voted in the words—

Farmers' or other mutual hail, cyclone, casualty, life—

Voting in the word "life"—

or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if—

And then we amended it to read—

85 per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

That is to say that the bill admits that that holding was erroneous, and corrects it as to the future. The only purpose involved in the amendment proposed by the Senator from Minnesota is as to whether or not it shall be corrected as to the past. That is all there is to the question. It will not cause a single dollar to be expended from the Treasury, as I understand, or if it does, it would be an inconsequential sum. Therefore, the only problem involved is as to whether or not the doors shall be open, it being retroactive in character, the committee fearing that if one retroactive amendment were adopted others might follow. The action of the committee, doubtless, was wise under the conditions; and yet, on the merits of this one proposition, I can not help but believe that this amendment is wholly justified by the circumstances and should be adopted.

Mr. WILLIS. Mr. President, will the Senator from Minnesota permit me to ask the Senator from Indiana a question?

Mr. SHIPSTEAD. Yes.

Mr. WILLIS. I desire to ask the Senator whether the committee—and particularly the Senator from Indiana—have directed especial attention to this language in the amendment proposed by the Senator from Minnesota:

Without any requirement that such above-mentioned organization be of a purely local character.

I think I am in favor of the general purpose the amendment has in view; but does the Senator think there is any danger from that rather broad language that companies would be included that are really not intended to be included? Is the language adequate for the purpose in view?

Mr. WATSON. I am inclined to think so. Of course originally there seems to have been some doubt as to the interpretation of the words "of a purely local character." The department seemed to think that if such a company were confined to a narrow space it might be a mutual company, whereas if it spread out over a whole territory it ceased to be a mutual company and became a profit-making concern.

Mr. WILLIS. I have in mind this sort of a case, if the Senator from Minnesota will permit me.

Mr. SHIPSTEAD. Certainly.

Mr. WILLIS. I know of a farmers' mutual insurance company located in a small village in Ohio, and yet it transacts business in perhaps three or four different counties. It is not a large company and does not operate at all for profit; it really is a mutual company; and yet, under the ruling to which reference has been made, that company has been held not to be "of a purely local character," and it is now proposed to levy assessments against it. If those assessments shall be levied in accordance with the Treasury ruling they will amount to more than the company has been required to pay out in losses during the last four years. So it seems to me some amendment of this character is desirable; but I wanted to be certain that the language which I read from the amendment of the Senator from Minnesota has been fully considered.

Mr. SHIPSTEAD. Mr. President, I wish to say to the Senate that the reason why the phrase "of a purely local character" is inserted in this amendment is because of the fact that that phrase has caused all of this trouble. The ruling was that the companies were not exempt unless they

were "of a purely local character," and it was held that to be "of a purely local character" they must be confined to one neighborhood. The Senator can easily understand how ridiculous such a contention is, because it can not and does not carry out the intention of Congress. For instance, if that ruling could under any stretch of the imagination be held to be reasonable, it would have to be interpreted to mean that a tornado mutual insurance company would have to be confined to a single neighborhood in order to come under the exemption of the revenue act of 1921. How would that work out?

I remember that something like four years ago we had a terrific windstorm in the community in which I live. I remember it particularly because on that evening we had a nationally known Chautauqua orator who came to speak in that community.

Mr. WATSON. Was that the cause of the windstorm?

Mr. SHIPSTEAD. The windstorm came while he was speaking; it blew down something like 30 or 40 barns, and, as a matter of fact, that local neighborhood was almost wiped out. If the insurance company had by law been confined to that single neighborhood, there would have been nothing left of the company. So it is ridiculous to require that a mutual insurance company shall be confined to a single neighborhood.

Mr. NORRIS. Mr. President, may I interrupt the Senator?

Mr. SHIPSTEAD. Yes, sir.

Mr. NORRIS. I should like to call the Senator's attention to the fact, as I understand it, although I am not an insurance man and have had no experience, that insurance companies all recognize that in order to make their policies safe not only for those who are insured but for the people who are liable to pay the losses, if any occur, they must spread out over a considerable territory, or the whole venture will be a failure if anything happens of the character the Senator has mentioned.

Mr. SHIPSTEAD. Yes, sir.

Mr. WATSON. It becomes top-heavy.

Mr. NORRIS. I understand that old, recognized insurance companies will refuse to take all the risks that they might be able to get in a particular neighborhood, on the theory of something happening, such as the Senator has mentioned. If it were in a town they would not take out a fire risk including all the buildings within a locality. If they did they would reinsure them with some other company.

I have been called out of the Chamber and have not been able to follow the Senator; but I know that this ruling, which seems to me to be erroneous—although I am not charging bad faith, of course—is a reversal of a ruling, as I understand—and I wish the Senator would correct me if I am not right—that was made early after the passage of the law, and that in accordance with the ruling then in force these companies went on, and afterwards the ruling was changed and was given a retroactive effect, going back over the period that had passed in which settlement had been made, particularly in the case of a mutual company. Men had settled all the obligations that they owed under the first ruling, and probably had moved away and gotten out of the company, and new ones had come in. Then came the ruling going back over several years, which I have been told by officials connected with mutual companies meant the ruination of every one of them, because it was a physical impossibility to go back and make these collections. They would have to go out of business.

We ought to go on the principle that if we want to encourage mutual insurance and cooperation—and I think that is the idea—if we are going to legislate against any particular kind it ought to be against the insurance company that confines its operations, if there are such concerns, to strictly local communities, because that is not very safe insurance.

Mr. SHIPSTEAD. I think the Senator is absolutely correct.

Mr. GEORGE. Mr. President, I should like to ask if it is not true that the assessments made against the mutual insurance companies are as a rule unpaid at this time? In other words, the money has not gone into the Treasury under this new ruling; has it?

Mr. SHIPSTEAD. The Senator means the taxes?

Mr. GEORGE. Yes.

Mr. SHIPSTEAD. There have been taxes collected; I do not know how much. A considerable drive has been made in the last 60 days to collect the taxes.

Mr. GEORGE. My understanding is that some taxes have been collected, but that other companies have not yet been called on at all, and that perhaps only a reasonably small proportion of the taxes now claimed under the new ruling have actually been paid in.

Mr. SHIPSTEAD. Oh, a very small amount has been paid in, I believe, up to this time. I believe a very insignificant sum has been collected up to this time; but if this ruling stands—and I do not see what there is to prevent it from standing—they will collect considerable sums. They are collecting the taxes now, and they are going back and collecting them for eight years.

Mr. GEORGE. It would be manifestly unjust, also, would it not, because many of the mutual companies have changed their policyholders since, and liabilities have been discharged, and new obligations undertaken?

Mr. SHIPSTEAD. Oh, certainly.

Mr. GEORGE. It seems to me that the amendment certainly ought to be adopted, and that the objection that it is retroactive has little or no force in this case. I quite agree with the Senator that the construction placed on the language in the revenue act of 1921 is unauthorized and unwarranted, because the very nature of a mutual insurance company precludes the possibility that it could be purely local in its operations, confined to a single neighborhood; and that language clearly was not intended by the Congress to apply to insurance companies of the kind that are dealt with in the amendment offered by the Senator from Minnesota.

That, of course, is borne out by the fact that in the bill we are now considering the committee itself and the Senate recognized the intent and meaning of the Congress in the enactment of the revenue act of 1921, and, manifestly, the intent and purpose of the Congress in the passage of the prior revenue act; and now we except mutual fire insurance companies from the operation of the act, as applied by the ruling made in the early part of 1922.

It seems to me that when the very nature and character of the business of a fire insurance company is considered we can not escape the conclusion that the Congress did not intend that a mutual insurance company, in order to be entitled to an exemption from taxation under the revenue act, should have its business confined to one local neighborhood, because the very theory of the insurance company is out of harmony with so narrow a construction as the department has placed upon the provision in the act of 1921.

That being true, the objection that this amendment is retroactive in effect ought not to have any weight. It ought not, at least, to be controlling on the Senate.

Mr. SIMMONS. Mr. President, if the Senator will pardon me, it would be impossible for an insurance company to live upon the patronage of a small locality.

Mr. GEORGE. Certainly.

Mr. SIMMONS. And therefore the act could not have any such purpose.

Mr. GEORGE. And the Congress could not have intended to apply the language "purely local" to an insurance company, but that language must have been intended to have application to other companies that were exempted under subdivision (10) of section 232 of the act of 1921.

Mr. BROOKHART. Mr. President, I think the test of whether or not an insurance company is mutual includes no element of size whatever, no element of locality whatever. The question is whether or not it is organized for profit; and in all cases where it is not, where the assessments are made for expenses and losses only, and there is no capital investment that gets a profit out of it, it is mutual, even though it may spread over the whole country.

I can understand that the profiteering companies would object to that construction, because they want to confine these other companies to localities; but there is absolutely no limit on this cooperative object so far as locality is concerned. Some of the cooperatives now are doing business clear around the world, taking in everything; so the objection raised by the Senator from Ohio certainly does not go to the essence of the mutual company under the law, and those mutual companies ought to be excepted.

Mr. WILLIS. Mr. President, I hope the Senator did not understand me to object. I was simply making inquiry as to the effect of the language. I am not objecting to the amendment. I expect to support it.

Mr. BROOKHART. I am glad the Senator raised the question, because I am always glad to have any element of this cooperative idea considered in the Senate of the United States.

Mr. WILLIS. I was going to call the attention of the Senator to a provision in another section of the bill also. The committee has already provided that at least 85 per cent of the income of the companies must consist of assessments for the payment of losses.

Mr. BROOKHART. That is a little more liberal provision.

Mr. WILLIS. Yes; so that that is pretty well guarded.

Mr. HOWELL. Mr. President, it seems to me that it could not have been the intention of Congress that an insurance

company should be purely local, because such an insurance company would be unsafe. It is necessary for an insurance company to have a wide range of risks in order that it may be able to meet its losses without undue assessments: Therefore, as it is impracticable to have an insurance company that is purely local in character and have one that would be safe for one to take a policy in, it must be evident that it was the intention of Congress that this expression should have the broadest possible meaning, and include not merely narrow localities but broad areas, so that there could be an average of loss that would not be so great as to make the assessments unbearable.

I trust that this amendment may prevail.

Mr. REED of Missouri. Mr. President, I agree with the statements that have been made that the intent of Congress was misconstrued by the 1922 ruling, to which the Senator from Minnesota [Mr. SHIPSTEAD] has referred. Such a construction would place Congress in the absurd position of having intended to limit the operations of an insurance company to a purely local community, and such an insurance company would be the most unsafe company that one could possibly devise. The great element of the security in insurance—in fact, the very fundamental principle lying at the basis of all insurance—is the wide spread of liability, which results in an immediate loss being spread over so large a community or so large a number of people that they can each contribute a very small amount to make up that loss. That is why we take out insurance. Otherwise each individual would carry his own insurance and stand his own loss.

It seems to me that the amendment offered by the Senator from Minnesota is one of merit and that we ought to agree to it.

Mr. SMOOT. Mr. President, the committee—and I want to say, if I remember correctly, unanimously—voted against any retroactive legislation. We have now added an amendment changing the postal rates; and as long as we have gone into legislation I do not see but that we might just as well legislate on this matter and agree to this amendment and let it go in. I had thought, however, of carrying out the wishes of the committee and, wherever there was a retroactive legislation, letting it be done in a legislative way—I mean by making claim, just the same as claims for any other taxes are made that have been collected.

That does not seem to be satisfactory to even the members of the committee, and therefore, as far as I am concerned, I am perfectly willing to accept the amendment, and I shall not make any plea hereafter against any amendment that is offered to this bill on the ground that it is retroactive.

Mr. WALSH of Massachusetts. Will the Senator yield?

Mr. SMOOT. I yield.

Mr. WALSH of Massachusetts. Do I understand the Senator to take the position that any amendment to this bill offered from the floor will be accepted by him?

Mr. SMOOT. I did not say that. I spoke of the principle we had adopted of receiving no amendment proposing retroactive legislation.

Mr. SIMMONS. I have no recollection of any agreement in the committee not to consider any retroactive legislation. We did agree that we would not consider the amendment offered by the Senator from Illinois, because we said it was irrelevant, but I do not remember that we had any understanding that we would not support any proposition because it might have a retroactive effect. I do not think I would have agreed to such a suggestion.

Mr. SMOOT. I know Senators did agree to it, and it was on this very amendment. The Senators themselves thought that perhaps if it had been adopted in the act of 1918 or the act of 1921 it would have been perfectly all right, and we went so far as to amend the bill to carry out those very ideas. It did not pass the House in this way. We struck out entirely the provision: "Also benevolent and mutual life insurance associations not operated for profit, whose business is purely local and wholly for the benefit of its members."

Mr. SIMMONS. This amendment could not have been before the committee, because it was only offered on the 5th day of May.

Mr. SMOOT. This amendment was offered, and I have received at least a hundred letters in relation to it. I forget what Senator brought it up.

Mr. REED of Pennsylvania. I offered the amendment in the committee.

Mr. SMOOT. I have stated the agreement, and that is what I have told every Senator who has come to me in relation to it. I told the Senator from Minnesota [Mr. SHIPSTEAD] the same thing. I told the Senator from South Dakota [Mr. NORBECK], when he brought a similar amendment to me, that that was the policy of the committee, and I thought I was carrying out the policy of the committee.

Mr. WATSON. The Senator is entirely right about that.

Mr. SHEPPARD. The Senator will recall that I also presented such an amendment before the committee.

Mr. SMOOT. The Senator from Texas came before the committee and presented an amendment along this line.

Mr. SHEPPARD. And I recall that the Senator told me that identical thing.

Mr. SMOOT. I am perfectly willing now to accept the amendment offered and have nothing more to say about it, other than that I think the ruling, under the laws of 1918 and 1921, was absolutely correct. There was no question in my mind as to that. I do not know whether Congress intended it or not in that way, but the ruling is according to the law. I think the law ought to be changed, and that is why I approve of the amendment to the bill.

Mr. SIMMONS. If the Senator will pardon me, I think the intent of Congress is very clear, and whether it is clear or not, the Senator is wrong, certainly, when he says that clearly the ruling was right. I do not think the Senator will find very many lawyers who would agree with that opinion. I believe the Senator is not a lawyer himself.

Mr. SMOOT. I am not a lawyer, but I know what language means when it is as plain as is this.

Mr. SMITH. Before the vote is taken, I want to call attention to a statement sent me by the representative of these companies. It seems to me it is not a question of whether one interpretation or another was placed on it, but simply a question of justice. This correspondent said:

> But few if any of the 2,000 mutuals affected by the new interpretation have a single policy in force that was in force in 1916. Many old members have died, sold out, or moved away. A tax levied and collected now covering all those years must be paid by people who had nothing to do with the company in 1916. It is a heavy tax, an unjust tax, a tax for the privilege of helping an unfortunate neighbor, and one that must come from an empty pocket.

He said also:

> This is not a request for mercy, money, or help. It is a request for justice and right—for what Congress gave and the Treasury Department recognized all these years. A request for the right to live and serve, the privilege to help bear the misfortune of our neighbors without having that burden increased by a tax.

Mr. SIMMONS. Mr. President, I simply want to say that I am clearly of the opinion that the rulings rendered by the Secretary of the Treasury holding for five or six years that these companies were not subject to taxation were correct interpretations of the law. I am advised that the ruling was reversed by the Secretary of the Treasury, not because the Secretary was himself convinced that his first ruling was erroneous, but because some judge of an inferior court rendered a decision that was contrary to the former Treasury ruling, and in order to render that decision he had to interpolate into the language of the act of Congress a comma that was not in it.

A court has no right to add a single word or a single punctuation mark to an act of Congress in order to clarify its meaning, and, as I understand the argument of the very able Senator from Minnesota, the court in rendering this decision stated that the language of the Congress was not properly punctuated, and in order to bring out and clarify the sense and meaning of Congress, that it was necessary to interpolate a comma.

No language, in my judgment, could be plainer than the language of the Congress used in this particular section of the act, and it would be a stultification of Congress to impute to Congress the meaning which this last interpretation of the Secretary of the Treasury does impute to it. I think the amendment ought to be agreed to.

The amendment was agreed to.

Mr. REED of Missouri. Mr. President, I send to the desk and ask to have read an amendment which has been printed for several days, and which I think is of very great importance in the administrative features of the bill. After it has been read, I will beg the indulgence of the Senate for just a moment until I explain the purpose of the amendment.

The PRESIDENT pro tempore. The Secretary will state the amendment.

The READING CLERK. The Senator from Missouri moves to strike out, on page 122, lines 20 to 25, inclusive, and also to strike out all of page 123, and on page 124 to strike out lines 1 to 8, inclusive, and to insert in lieu thereof the following:

> (b) If the board determines that there is a deficiency, the amount so determined shall be assessed and the taxpayer shall be notified of the

assessment and shall, at the same time, be furnished a copy of the decision of the board stating its findings of fact and conclusions of law. Within 30 days after the mailing of such notice, the taxpayer may file with the commissioner a written statement showing the amount of the deficiency (if a deficiency is admitted by the taxpayer) admitted by him to be due, and the amount of tax so admitted shall be paid upon notice and demand from the collector. If the deficiency determined by the board is in excess of the amount so admitted by the taxpayer, the amount of such excess may be collected only by a civil suit brought in the name of the United States in the District Court of the United States for the district in which the taxpayer resides or has his principal place of business. The court shall include in its judgment interest upon the deficiency, determined by it to be due, at the rate of 6 per cent per annum from the date prescribed for the payment of the tax to the date of the judgment. If the court shall find that the defense is frivolous or for the mere purpose of delay or in bad faith the court may assess a penalty of not to exceed 25 per cent of the judgment rendered, and upon a showing by the district attorney that there is good cause to believe that the collection of the deficiency will, before judgment is rendered and execution levied, be jeopardized by any fraudulent or wrongful act of the taxpayer or his agents, the court may require the taxpayer to give reasonable security satisfactory to the court that the amount finally adjudged to be due, will be paid, and, if such security be not given as in the court's order prescribed, the court may issue its writs of attachment, injunction, or other proper process necessary to protect the Government in the collection of the taxes. Such suit for the collection of a deficiency or any part thereof shall be begun within one year after final decision of the board, and may be begun within such year even though the period of limitation prescribed in section 277 has expired.

(c) (1) If the taxpayer does not file an appeal with the board within the time prescribed in subdivisions (a) of this section, the deficiency of which the taxpayer has been notified shall be assessed, and shall be paid upon notice and demand from the collector, or

(2) If the taxpayer does not file a written statement as provided in subdivision (b), the deficiency determined by the board shall be collected upon notice and demand from the collector.

(d) If the commissioner believes that the assessment or collection of a deficiency will be jeopardized by the delay resulting from the provisions of subdivision (a) of this section, the deficiency shall be assessed immediately and collected in the same manner as a deficiency which has been determined by the board. In such case the assessment may be made (1) without giving the notice provided in subdivision (a), or (2) before the expiration of the 60-day period provided in subdivision (a) even though such notice has been given, or (3) at any time prior to the final decision by the board upon such deficiency even though the taxpayer has filed an appeal.

Page 131, strike out lines 24 and 25; also strike out all of page 132.

Page 133, strike out lines 1 to 20, inclusive, and in line 21 strike out "(d) Except as provided in this section, no," and insert in lieu thereof "Sec. 279. No."

Mr. REED of Missouri. Mr. President, the purpose of this amendment is to afford the taxpayer his day in court. As the law now stands, when a taxpayer has made his return, the tax authorities may, for such reasons as seem good to them, raise his assessment, and they are empowered, if they see fit, to issue a distraint as against the property of citizens.

The practice, as I understand it, has been to require the taxpayer to pay in the amount of the increased assessment, and then to allow him to get it back if he can. In addition to this, distraints frequently have been issued seizing the property of the citizen, so that the man whose taxes may have been raised unjustly may find himself forced to raise a large sum of money at once or have his property seized. I can illustrate the situation by a case that came to my immediate notice.

The tax collector concluded that a return was not correct, that the taxpayer should have included certain properties which he had not included, and thereupon proceeded to raise his assessment to an amount which placed a tax upon the individual of approximately $50,000. The man was unable to raise the $50,000, for indeed it would have involved every dollar he was worth, and accordingly a writ of distraint was issued against his property and he stood in that helpless condition for nearly a year and a half. At the end of that period, on a full review, the entire tax was remitted except three or four hundred dollars.

The purpose of the amendment, which has been prepared with considerable care, is that in case a tax is raised, first, to provide a notice to the taxpayer and to give the taxpayer a certain number of days within which he can admit all or any part or can deny all or any part of the validity of the raise. If he admits any part of the raise to have been valid, then he must pay that part the same as he would have paid on his original return. If he denies the validity of any part, then it is made the duty of the United States district attorney for the district in which the taxpayer resides or has his principal place of business to sue for that additional tax.

If it is found that the taxpayer owes the tax, he must pay the tax, pay the costs, and pay interest at the rate of 6 per cent. But if it be further found by the court that the suit was not a good-faith suit and in order to prevent the filing of suits merely for delay, the court is authorized in its discretion to add a penalty of not to exceed 25 per cent. The purpose, of course, is to prevent a taxpayer from refusing to pay the additional assessment merely for the purpose of gaining delay, instead of in good faith and because he believed he had a just defense.

It is further provided, in order to make the Government absolutely secure, that upon a proper showing by the district attorney that the taxpayer is liable to take such action as will jeopardize the Government in the final collection of its tax, the court may require the taxpayer to give bond or may issue his writ of attachment or other process in order to assure the final payment of the tax. But in each of these instances the American doctrine is maintained that the citizen has his day in court. The courts are there, the district attorneys are there, and the penalties to be visited in case there is a bad-faith defense interposed to the payment of the tax are sufficient to deter any person from making such bad-faith defense.

The other clause to which I have referred, which gives to the court the right to issue its process in case the Government is liable to be defrauded, abundantly protects the Government against fraud.

Senators, there is nothing in the whole tax law that, in my opinion, has been a subject of greater criticism and that has resulted in more unjust oppression of our people than the right of some subordinate in the tax department to arbitrarily raise the assessment duly sworn to by a citizen, and thereupon require that citizen either to put up the money to pay the tax and then get it back by such laborious processes as are provided in the law, or in default of the payment of the cash, which he frequently can not raise, to have his property seized and held under a distraint process which frequently results in bankruptcy and always in great oppression.

Mr. SWANSON. Mr. President, will the Senator permit me to interrupt him?

Mr. REED of Missouri. Certainly.

Mr. SWANSON. What are the processes by which a citizen who has overpaid can get back his money under the existing law?

Mr. REED of Missouri. As I understand it, he pays his tax. Then he makes an application for a return of it. That is heard through the long, troublesome processes which exist; and I am not saying this to criticize the Treasury, because I know the Treasury is overloaded and overburdened. When the Treasury is satisfied that the money has been unjustly collected it can order a remittance of the tax or the taxpayer can go into court at that time. In the meantime, however, he has had to pay his money.

Let me give another illustration, which I believe to be the fact, of a large manufacturer who built a plant during the war and who afterwards took the plant back from the Government at the depreciated price which the Government fixed upon it. My understanding is that subsequently the Treasury Department conceived the idea that the difference between the cost of the buildings erected at war prices and the price at which the Government had turned them back to the manufacturer constituted a profit and proceeded to make assessment against the manufacturer, which I understand ran into the millions. Accordingly he was forced into bankruptcy and his automobile establishment was sold under the hammer to a great rival automobile manufacturer. My understanding is that subsequently the Treasury determined that the assessment of that tax had been unjustifiable and it was remitted, but in the meantime the institution had been wrecked.

Whether that story, which came to me upon authority which I regard as perfectly sound, is correct or not the fact remains that here is this arbitrary power lodged in agents of the Government who may act in the best of faith upon ex parte information and who may nevertheless work most grievous wrongs to the citizen.

In most of the States, indeed under the laws of all the States with which I am familiar, no citizen's property can be seized for taxes where there is a dispute as to the amount of tax which should be levied until in some manner or form the citizen has been afforded his day in court. But when we come to this particular law, although the citizen may have made his returns under oath, and although they may be absolutely accurate, it is still possible for some agent of the Treasury De-

partment, under a mistake as to the true fact, to make an arbitrary assessment in the nature of an increase, for the citizen's property to be distrained, although he may not owe a dollar, and may never have been given his day in court.

The amendment has been prepared and submitted to experts on the tax problem and I believe it to be workable and entirely safe. I have tried to draw it so that the Government would be safeguarded, but at the same time so that the American right and the natural right of every man to have his day in court before his property is seized shall be in some manner preserved.

Mr. SMOOT. Mr. President, I desire to say to Senators that under existing law the complaint of the Senator from Missouri is well justified, but in the bill now under consideration those very things have been taken care of to a large degree, and as far as I think it is wise or prudent to go.

In the first place, the bill provides that there shall be no additional assessment imposed against the taxpayer until a notice has been given to him. That corrects the existing law in that respect, and that is one of the points of which the Senator from Missouri complains.

The next point is that in the bill there is a board of appeals created, and no taxpayer will be compelled to pay a dollar of disputed tax until the board of appeals has passed upon the matter. That is another question that has been taken care of.

If the amendment proposed by the Senator from Missouri should be adopted, it would force at least 200 cases every week, on an average, into the courts. That is what it would mean.

Mr. SWANSON. Mr. President——

The PRESIDING OFFICER (Mr. WILLIS in the chair). Does the Senator from Utah yield to the Senator from Virginia?

Mr. SMOOT. I yield.

Mr. SWANSON. What are the conditions under which the board of appeals would consider the differences between a taxpayer and the Government?

Mr. SMOOT. Every taxpayer has a perfect right to take his case to the board of appeals created by the terms of the pending bill. He does not have to pay a penny to the Government of the United States until after a decision is reached by that board.

Mr. SWANSON. Does the Senator mean that if there is a dispute, the tax is not assessed permanently against him until the board reaches its final decision?

Mr. SMOOT. Until the board of appeals finally passes upon it, and after that if he wants to go to court he can do so, but in order to go to court he must pay his assessment.

Mr. REED of Missouri. He must pay it before he can have a trial in court.

Mr. SMOOT. If it were not that way, none of the amounts assessed could be collected for a long, long time. The taxpayer could pay the interest provided for, which is 6 per cent, and the Government would not know when it might get any of the money. It is against all the rules that have ever been applied in the collection of taxes by the Government. It is a change of the whole system that has been in vogue ever since the Civil War.

Mr. SWANSON. What is the system in connection with the payment of customs duties?

Mr. SMOOT. Disputes as to customs duties go to the Court of Customs Appeals.

Mr. SWANSON. After the Government has assessed customs duties and the importer has paid them, but contends that the assessment is not correct and wants to get a rebate, what course is pursued?

Mr. SMOOT. He has got to pay the duties assessed before the goods are withdrawn, and then, if the dispute is not settled, he can go to the Court of Customs Appeals, and it is there decided. If it is decided in his favor, the Government returns the money to him, but if not, the Government has the money. That is the way all taxes by every government in the world are collected. If we now shall agree to this amendment, I do not know when the Government is going to get the money. A taxpayer could make any kind of a return, of course, knowing it to be wrong, and then carry the case up to the court of appeals and meanwhile never pay a cent. All city taxes and all the county taxes are paid under exactly the same procedure as proposed by the bill. I simply call the matter to the attention of the Senate.

Mr. GLASS. Mr. President, I am inclined to agree—indeed, I quite agree—with what the Senator from Utah has said about the established practice and about the essential nature of it; yet it must be said that Congress and the administrative part of the Government are culpable in that they have not long ago provided for a method whereby a taxpayer may be acquit of his obligation to the Government. As the Senator knows, I have frequently complained to him of the failure of Congress to do that. We have been told now year after year not merely by the present administration but by the former administration of the Internal Revenue Bureau that they would soon be current with this work, but they have never yet become current.

Mr. SMOOT. And they never will become current.

Mr. GLASS. No; I will not say they never will become current, for they should be made to become current. Congress in its appropriations has dealt very generously with the Internal Revenue Bureau. That bureau has been asked what it needed, and has been given almost invariably what it needed, but it has never been current with its work. It is the real vice of Federal taxation. As I have frequently had occasion to say, it makes people literally hate the Government who ought to be taught and who would willingly prefer to love the Government. It is totally wrong; and I had hoped that in the pending revenue bill there would have been some provision to put an end to that sort of intolerable situation. The Internal Revenue Bureau is not current, and it is not much nearer being current now than it has ever been.

Mr. SMOOT. Mr. President, that is why it is proposed to create the board of tax appeals. It is to be created to do away with that situation; to take care of the taxpayers, and not have the burdens and hardships which have been recited by the Senator from Missouri placed on them in the future. The criticism of the Senator from Virginia as to the existing law is proper. There has not been a Secretary of the Treasury since income taxes have been imposed but has asked Congress in some way to take care of the situation which we are trying to take care of in the pending bill.

Mr. SWANSON. What limitation does the pending measure fix as to the time when assessments may be made? How far may the bureau officials go back under the pending bill?

Mr. GLASS. The bureau may go back to 1917.

Mr. SMOOT. They may go back to 1917.

Mr. GLASS. To the original inception of the income tax.

Mr. SWANSON. The bureau may go back to 1917?

Mr. GLASS. Yes; they may go back to 1917 and may literally bankrupt a man or a corporation by the assessment of alleged back taxes.

Mr. SMOOT. The only single exception, of course, is that under the law there is provided a limitation of five years.

Mr. SWANSON. It seems to me there ought to be some limitation on the power of the bureau to go back and make assessments for past years.

Mr. SMOOT. There is a limitation provided of five years, as has been the case also in previous laws.

Mr. SWANSON. It is not proposed to lessen that limit?

Mr. SMOOT. No.

Mr. SWANSON. Unless in cases of fraud or corruption or collusion there should be a limitation. When a man honestly makes his tax return, if the Government can go back five years, after he has lost his books and has lost, perhaps, a great deal of money, and impose a different assessment upon him, a great hardship may be worked, and it has been intimated it may even drive some men to bankruptcy. It seems to me we should shorten the time within which the Government may go back and make assessments against taxpayers.

Mr. GLASS. If the bureau is ever going to become current with its work the time ought to be shortened very materially. The Senator from Utah knows that a taxpayer may lay his books before an expert of the department itself; he wants to pay his taxes; he has no disposition on earth to evade them; in fact, it would shock him to suggest that he wants to reserve anything or to conceal anything. And then, five years thereafter, some other expert of the department with a different notion of actuarial work and with a different view as to exemptions and matters of that kind may come along and make that perfectly honest taxpayer appear in the light of attempting to defraud the Government and may collect a great sum of money from him. Such a condition is intolerable.

Mr. SMOOT. I agree with the Senator that that can be done, and that is what we are trying now to get rid of. We provide in this bill for 28 judges, and those judges are to sit in different sections of the country for the very purpose of deciding disputed claims and making the work current.

Mr. SWANSON. Let me ask the Senator a further question. This bill proposes to create a court of 28 to decide the tax matters. If a reassessment is made against a man and he goes to that court and they render a decision, after that decision is rendered is it a finality as to that man or may the Government go back and make another assessment under this bill?

Mr. SMOOT. No; it can not.

Mr. SWANSON. The decision of the court, then, is an absolute finality as to all taxes past and present?

Mr. SMOOT. Absolutely.

Mr. SWANSON. I think that is a great improvement over the existing law.

Mr. REED of Missouri. Mr. President, the difference between myself and the Senator from Utah is this: The bill has set up a board of tax appeals, but that board of appeals is not a court of law. I do not propose to interfere with the board of appeals. We have had such a board all the time, although it was not created by law but was created in the Treasury Department as a matter of custom in order to hear the appeals of wronged taxpayers. They undertook to divide up their work and to have a little group of men in the department sit as an appeal board and hear the complaint of the taxpayer; but when a decision is rendered there it is the decision of two or three men who might or might not know anything about the law, except as they had learned it in their administration of it, and every decision that is rendered is rendered by men whose first purpose is—or at least it is one of the controlling purposes—to get money for the Government. So when the taxpayer found himself in that situation, he found himself powerless to have a remedy, except by paying in his money and then suing to get it back or by suffering a distraint.

My proposal is that when the board of tax appeals has acted if the taxpayer still believes himself to be wronged by the decision he may then go into court, and the Government must go into court and try the question out, giving him a day in court, where he will have a trial according to the rules of law and evidence. If he makes a defense that is not a good-faith defense, if it is a frivolous defense, the court can penalize him to the extent of 25 per cent; but in all cases he must hire a lawyer, and he must pay 6 per cent interest upon the taxes finally found to be due. If the board works as perfectly as my friend from Utah hopes it will, the taxpayer would in very few instances be obliged to go to court; but if it does not work perfectly, and if the taxpayer is really aggrieved, he will have his day in court according to the rules of law and evidence; otherwise he is remitted merely to the decision of a subdivision of a board created in the Treasury Department out of such material as they may be able to get, and that board is quite as likely to err as the boards that were voluntarily set up without any particular law or any law whatever to warrant their creation.

I have given this matter a great deal of care and attention, and I say to the Members of the Senate that, in my judgment, but few cases will go into court. The mere fact that the taxpayer has a right to go into court will have a very salutary effect upon the gentlemen who may sit upon the board representing the Treasury, for they will know that all of their decisions, if they be unjust or unfair, are liable to review by the court, and the result will be they will begin following the forms of law and they will not be so likely to assume an arbitrary position toward the taxpayer. But suppose that a great number of cases do go into court. Where the taxpayer feels he has been aggrieved to such an extent that he is willing to hire a lawyer and pay the certain penalty of 6 per cent interest, with a possible penalty of 25 per cent, why should the taxpayer not have the right? When did it happen that a man's money could be taken from him in this country by the Federal Government without giving him an opportunity to test out whether he owes that money or not?

It is not necessary in order to collect taxes that we should impose great hardships upon the taxpayer, and neither ought it to be so that the taxpayer may delay the Government without any pains or penalties being affixed; but that he should have his day when he can present his case and have it tried according to the rules of law, it seems to me is indisputable.

Mr. McLEAN. Mr. President——

Mr. REED of Missouri. I yield to the Senator from Connecticut.

Mr. McLEAN. At what stage of the proceedings does the Senator's amendment permit the Government to secure the tax which is due; that is, when may the Government make an attachment?

Mr. REED of Missouri. Immediately upon the finding of the board, if the taxpayer does not appeal—and there are 30 days allowed for an appeal—he must pay; that is the first step. If he does protest the decision, the Government can bring its suit immediately.

If the Government has reason to believe that the taxpayer is going to defraud the Government, or that the Government will lose its taxes, upon a showing of that kind the court can issue its writ of attachment or other process.

Mr. McLEAN. Suppose the decision of the board is in favor of the Government, and the taxpayer takes an appeal: As I understand the Senator's amendment, the Government can not secure its tax until after a decision has been reached by the appellate court.

Mr. REED of Missouri. No; by the district court.

Mr. McLEAN. The court to which the appeal is taken.

Mr. REED of Missouri. Of course the case might be carried up.

Mr. McLEAN. Mr. President, it seems to me that that is at variance with the system of collection of taxes in every State in the Union, and necessarily so, because if a taxpayer by merely taking an appeal can protect his property from attachment, it seems to me that the Government will lose a great many millions of dollars. Any taxpayer who was in trouble or in danger of insolvency or anything of that sort would be tempted to take an appeal, and before you got a decision from the court, when the Government could make its attachment, he would not have a dollar left.

Mr. REED of Missouri. The Senator overlooks the fact that I stated that this bill contains a clause saying that in the event there is a showing made to the court or the district attorney that the Government is liable to lose its taxes, then at once the court may order the property to be seized.

Mr. McLEAN. You compel the Government to bring a suit.

Mr. REED of Missouri. Exactly; which is a very simple matter.

Mr. McLEAN. In addition to the appeal of the taxpayer.

Mr. REED of Missouri. No; when the taxpayer does not pay the additional tax the Government goes into court to collect it.

The process is this: When they make a finding, if it is not accepted by the taxpayer the Government files a suit against the taxpayer for the collection of the money. If, in addition to filing a suit, the Government makes a showing to the court of reasonable ground to believe that the Government will lose its taxes by reason of any delay, an attachment or any other necessary process of the court may be issued to protect the Government. So it would almost infallibly follow that the Government would be in no jeopardy, because the delay would be very slight.

Mr. McLEAN. I think the Government would have to bring a suit in every case, and there would be 200 cases a week, and the Government would have to bring a suit in every case if it expected ultimately to collect its tax.

Mr. REED of Missouri. The Senator overlooks the fact that if that be the case the court has the right to impose a penalty, in addition to the 6 per cent, of 25 per cent.

Mr. McLEAN. Yes; but when the Government gets ready to impose its penalty there is nothing there.

Mr. REED of Missouri. But in the meantime the writ of attachment may have issued, and could issue.

I do not think I made myself understood by the Senator. Let us take a case. Let us say that the Senator concludes that he is aggrieved by virtue of the decision of the board. The Government brings its suit. It can bring it at once. We will assume that the Senator is in such financial condition or that he is in such moral situation that he is willing to try to defraud the Government. Immediately the Government can then, through the court, issue its process and seize his property. That protects the Government against the rascality or the improvidence of the litigant.

The only difference between that and the present law is that now a clerk in the office of the tax collector can order a man's property seized when he believes that the Government is about to lose its money, but in this instance before that process could issue there would be submitted to a court the showing of a district attorney that he had reasonable grounds to believe that the property ought to be attached, and that gives to the Government a very summary remedy—a right of attachment upon an unliquidated claim.

When you try your case finally—and I am speaking now of this delay which the Senator says will occur through people who want merely to get delay—if the court finds that the defense has not been a good-faith defense, that it was made for delay or any other improper purpose, the court can assess the taxpayer 25 per cent in addition to all the costs and the 6 per cent interest. That will very effectually stop any lawyer from ever advising a client to go into court and make a contest unless he has a question to submit that has sufficient merit to lift it above a mere dilatory plea, and I have not any doubt about it.

The Senator says that this would not be in accordance with the rules of any State. In my State, in the case of all taxes,

before there can be a sale of a citizen's property a suit is brought.

Mr. McLEAN. Yes; but not before an attachment.

Mr. REED of Missouri. No.

Mr. McLEAN. The debt can be secured.

Mr. REED of Missouri. No; the debt can not be secured until you have brought your suit on anything except real estate.

Mr. McLEAN. But you can attach when you bring your suit.

Mr. REED of Missouri. Certainly, and you can in this instance.

Mr. McLEAN. Yes; but, Mr. President, you have several million tax returns every year. I do not know how many cases there are pending now, but it seems to me that you impose upon the Government an impossible burden. It must ascertain that portion of the taxpayers which it considers is honest and will not undertake to sequester and secrete its property, and the portion that may be guilty of fraud, and separate the sheep from the goats, and immediately brings these suits. Otherwise you are going to lose millions of dollars.

Mr. REED of Missouri. No; not at all. I do not so understand it. The process is as simple as a process can be made. That is, when the taxpayer does not pay his tax, a list of taxpayers is sent to the district attorney, the district attorney brings his suit, and in every instance, if he so desires, he may show to the court that there is a liability of a loss of the tax, and thereupon the court issues its process.

Mr. McLEAN. Mr. President, one word more and I will not follow up the discussion any further.

It seems to me that for the Government to make itself safe the officials of the Government have to be doubly alert, and where there is the least suspicion that a man is going to attempt to evade his tax a suit has to be brought, and you have a condition doubly worse than the one which the Senator describes. A great many innocent men will be involved in this net, and the Government will have to take this action to protect itself, and the hardships of which the Senator complains will be multiplied a hundredfold.

Mr. REED of Missouri. Why would they be multiplied? If a district attorney in court has to present to a judge some reasonable ground for attaching a man's property, how does that multiply the difficulty to the taxpayer over a condition where a clerk in the department can go out and issue his order of distraint, and that ends the whole matter?

Mr. McLEAN. Not until after the final judgment is rendered by the appellate court, under the Senator's amendment.

Mr. REED of Missouri. No, no; it can be done at once.

Mr. McLEAN. It can be done at once, but it would not be done in the natural course of things unless the Government suspects that a taxpayer is going to evade his taxes.

Mr. REED of Missouri. The Government does not to-day issue these orders of distraint unless it suspects that a man is going to evade his taxes, or some clerk suspects it.

Mr. McLEAN. Very true, and that is what the Senator is complaining of—that they overdo it now.

Mr. REED of Missouri. Exactly; and now I am giving the taxpayers just this additional safeguard, that before that order issues——

Mr. McLEAN. But you are putting the Government on notice that if it does not bring a suit it is likely to lose millions of dollars.

Mr. REED of Missouri. Why, the Government is on that notice all the time. I can not understand the Senator's process of reasoning. Perhaps he can not understand mine, and we just are not thinking along the same lines.

The process to-day is this: When the board of appeals shall have made its decision—that is, under this bill—immediately an order of distraint may be issued; the taxpayer may have his property all seized, and he can protect himself against it only by paying in the money at once and getting it back the best way he can, or suing to recover it; but he must pay this money before there has been any adjudication by any court on earth that he owes it. The process I propose is that before this property is seized on the order of some clerk or some subordinate a court shall have found, upon a showing made to it by the district attorney, that there is some reason for sequestrating the property of the citizen, and upon that showing the court can fully protect the Government; but the taxpayer in the meantime has the protection of judicial action.

How much delay will it make? The local collector of taxes, if he be a man who has any regard for his duty or any regard for the rights of the taxpayer, will not have these orders of sequestration issued by wholesale under the present law. He issues them when in his judgment there is reason to believe that the taxpayer is about to evade his taxes. Now, the trouble is that that action has been taken by clerks and by subordinates, by men unacquainted with the law, and it has resulted in infinite hardship in multitudinous cases and in cases where the taxpayer had a good defense, and bankruptcy has followed, and all kinds of hatred of the Government have been engendered by virtue of these harsh acts.

What am I asking here? I have offered an amendment more drastic than the laws that exist in the States with the laws of which I happen to be acquainted.

Under the laws of my State, before the Government can collect its tax it must bring its suit; and, if I recall aright—although I have not examined the statutes recently—there is no provision for an attachment by the Government in advance of final judgment. I have put that provision into this amendment, however, for the purpose of making it absolutely certain that the Government can protect its interest; and at the end of that suit, under the laws of my State, if the Government gains its case it proceeds to the collection of its taxes. Its taxes are a lien upon the real estate from the time they are levied, but not so as to personal property, and we are dealing here with incomes.

If the Senate wants to say to the citizens of the United States that their final court of appeals to all intents and purposes is to be a board that travels about over the country, where you will have haphazard hearings by men who may or who may not know the law, and that at the end of that kind of a hearing—which will be no better, in my judgment, than the hearings we have had in the past down here by these self-constituted boards of appeal—the taxpayer's only recourse is to pay the tax and to try to get it back if he can, and in the meantime to suffer the sequestration of his property, that, of course, is for the Senate to say.

For my part, I do not understand how any man can claim that the Government of the United States, or any other power on earth, has the right by arbitrary act to take the property of a citizen, or to seize his estates, and deny him his right to his day in court before that thing is done.

Mr. President, I submit the amendment.

Mr. WALSH of Montana. Mr. President, the hardships to which the Senator from Missouri calls the attention of the Senate in connection with the collection of these taxes is a very real one. I dare say that all of us have had occasion to know of them. At least two or three instances have come under my notice, and my assistance has been asked in cases where the assessing officers have gone back for two or three or four years and assessed against the taxpayers delinquent taxes of such an amount that he found it impossible to pay in advance and secure redress through the ordinary proceeding in a court of law, simply because it would bankrupt him to endeavor to raise the money. He was therefore obliged to suffer a distraint. That is a real hardship, and it is one to avoid which ought to have the very earnest and serious consideration of the Senate in connection with this measure.

I can not believe, however, that it is a wise thing for the Congress of the United States to impose upon the Government of the United States the obligation to institute a suit to establish a tax against a taxpayer, as I understand would be the operation under the amendment proposed by the Senator from Missouri. Of course, it is supposed that some tax is due from the taxpayer, and I take it that the amendment offered by the Senator from Missouri contemplates that the taxpayer will pay so much of the tax as he admits to be due.

Mr. REED of Missouri. That is provided.

Mr. WALSH of Montana. And then, if the Government claims anything more, the Government must institute suit. The necessary operation of any such system as that, as a matter of course, would be that the taxpayer in innumerable cases would claim that the tax due from him was only a small part of that which was actually exacted of him, and then, if the Government wanted to get anything more out of him, it would be necessary to institute suit to recover the balance.

Mr. REED of Missouri. If the Senator will pardon me at that point, the provision is, of course, that he must pay all that he has returned, and then any additional sum found against him which he admits, and it brings the controversy down to the disputed item; but he does not escape all taxes.

Mr. WALSH of Montana. But he is required to pay only so much as he admits to be due, that is all; and if the Government claims anything more than he is willing to admit, the Government must then institute a suit, and take all of the burden of the prosecution of that suit, with all the delays and appeals that are incident to a lawsuit.

Mr. RALSTON. I would like to ask the Senator from Montana whether, in his opinion, a taxpayer would be likely to make a frivolous defense when, in order to do so, he would

have to incur the expense of hiring counsel, and run the chance of being subjected to a 25 per cent penalty, as I understand the Senator from Missouri provides in his amendment?

Mr. WALSH of Montana. Of course, he might not be chargeable at all with having offered a frivolous defense to the suit that is brought against him. It is easily conceivable that he would act in perfect good faith; but, of course, he is the judge in his own cause in the matter, and very naturally he would give himself the best of it, and in a controversy that might be carried on in perfect good faith on both sides the chances are that the taxpayer, of course, would not pay in every instance, or in the majority of instances, the amount which really was due from him.

I was a little surprised to hear the Senator from Missouri say that before a tax can be collected, or before distraint can be made against any taxpayer in his State, the State is required to institute an action against him for the recovery of the tax thus charged against him. My understanding was that the very general run of statutes was quite to the contrary; that the tax collector will distrain, and that the only way the taxpayer can meet the situation is to pay the tax and prosecute his action at law for the recovery of so much as he claims is not due. But I find by reference to the authorities that there are some States which pursue the practice referred to by the Senator from Missouri. I take it, however, that that is quite contrary to the rule.

I find in Cooley on Taxation, at page 50 of the first volume, the following:

> In some States, also, tax proceedings are reviewed and confirmed by the courts before any sales of property are ordered or demands conclusively fixed against individuals. But this again is not legislative. Such a review is supposed to be favorable to the taxpayer, as it gives him an opportunity to take the opinion of the court upon the legality of the demand made upon him, without waiting until the collector comes and seizes his person or his property. The proceeding is the institution of a suit on behalf of the State against each individual taxpayer or item of property taxed, and it calls upon the court to apply the law to the issues which such a suit presents.

In a great many States, or at least in some States, provision is made for such a proceeding in court before sales of real estate are made. That is very largely formal, however. The delinquent tax list is published, and the proper taxing officer institutes a suit and publishes notice that unless an answer is made by a certain day he will sell as provided, and then any taxpayer may come in and defend that suit. But that procedure is justly criticized as quite obstructive to the usual collection of taxes.

The same author, at page 54, has the following to say:

> The existence of government depending on the prompt and regular collection of revenue must, as an object of primary importance, be insured in such a way as the wisdom of the legislature may prescribe. There is a tacit condition annexed to the ownership of property that it shall contribute to the public revenue in such mode and proportion as the legislative will shall direct; and if the officers intrusted with the execution of the laws transcend their powers to the injury of an individual, the common law entitles him to redress. But to pursue every delinquent liable for taxes through the forms of process and a jury trial would materially impede, if not wholly obstruct, the collection of the revenue.

That, I think, is the general rule, and characterizes the statutes generally. But we have found it necessary, in the collection of taxes for Federal purposes, to go still further than that; and, as stated by the Senator from Utah, an act was passed as early as 1867 providing that no suit for the purpose of restraining assessment or collection of any taxes shall be maintained in any court. So that under the statute, which has been in existence since 1867, not only is the Government not to be obliged to go into court to establish a claim against a party but the party could not even appeal to the court and get a writ of injunction to restrain the enforcement of the tax, and the Supreme Court of the United States has gone so far as to hold that the statute would apply even to a statute which is charged to be unconstitutional; even the enjoinment of an unconstitutional tax statute could not be secured in view of this particular provision of the law.

That is only the legislative expression of a rule that is generally enforced by the States, even in the absence of a particular statute. I read from the second volume of the work referred to at page 415, as follows:

> Personal taxes: When a tax as assessed is only a personal charge against the property taxed, or against his personal property, it is difficult in most cases to suggest any ground of equitable jurisdiction.

That means, of course, the jurisdiction to issue a writ of injunction to restrain the sale of property for the tax.

> Presumptively the remedy at law is adequate. If the tax is illegal and the party makes payment he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous. The exceptions to this rule, if any, must be of cases which are to be classed under the head of irreparable injury; as when the enforcement of a tax might destroy a valuable franchise, or might embarrass an assignee or receiver in the execution of his trust, or when property is levied upon which possesses a peculiar value to the owner beyond any possible market value it can have, and other like cases where the recovery of damages would be inadequate redress. A case would be exceptional, also, if under the law no remedy could be had to recover back moneys paid.

So we have gone very much further. We have not only provided that the Government must institute an action in order to recover the tax, but we have actually prevented the taxpayer from going into a court of equity to enjoin the Government from distraining for the purpose of recovering the tax, and I think that that is the common statute.

What should be done about it? I have not had an opportunity to examine with as much care as I should like the provisions of the pending bill concerning the boards of review, but it seems to me that that meets the situation fairly well. The taxing officers assess the tax; the return is made by the taxpayer, and the assessing officers do not agree to it; they raise the assessment; then the taxpayer, before any distress is made, can appeal to the board of review and have a hearing before that board upon the legality and upon the fairness and justice of the assessment.

Mr. McLEAN. He gets notice in every instance where there is a raise.

Mr. WALSH of Montana. He gets notice in that way of course. Of course the board of review is not a court by any means. The Senator from Missouri is quite right that the board never can deprive a man of his right eventually to have the matter adjudicated by a court. But we can provide that he can not appeal to the court until he pursues the remedy prescribed by the statute.

It seems to me the situation is fairly well taken care of, particularly as the board of review tries the matter in as nearly a judicial way as is to be expected in these administrative proceedings.

I am going to offer two amendments to those provisions, which I trust will have the attention of the Senator from Utah, for the purpose of giving the decisions of that board a higher character. I think the board should be composed of lawyers, men who are able to construe the law and admitted to practice in the courts either of the District of Columbia or of the States. Then it is provided at page 238 that—

> The proceedings of the board and of its divisions shall be informal and in accordance with such rules as the board may prescribe. Opinions (other than findings of fact) shall not be in writing unless the chairman so orders.

I would require that opinions be filed in every case so that everyone would know upon what ground the judgment of the board is based and in order that they should have character, and then I would provide that the opinions shall be printed just the same as rulings of the Commissioner of Internal Revenue are now printed, so that other taxpayers and their attorneys would have the benefit of opinions thus filed as a guide for their conduct.

Mr. SMOOT. When the bill comes into the Senate and is still open to amendment I see no objection to what the Senator suggests; that is, for the board of appeals provision of the bill. The only doubt in my mind is whether it would be best to require the board to be composed entirely of lawyers. I know some of the very best tax men in the United States are not lawyers, men who have made a deeper study of the tax question than any lawyer of whom I ever knew; but I agree also with the Senator that perhaps 26 or 27 of the 28 members will be lawyers, no matter whether so provided in the bill or not.

Mr. WALSH of Montana. Of course that may or may not be true.

Mr. SMOOT. That is only a suggestion.

Mr. WALSH of Montana. I can very readily understand that some man who is not a lawyer at all would be a better member of the board of appeals than some lawyers.

Mr. SMOOT. Yes; there is no doubt about that.

Mr. WALSH of Montana. But, of course, many of the questions arise from a construction of the statute, and the man ought to be able, it seems to me, to bring to the case the training of a lawyer. It would, of course, be advisable to appoint a lawyer who likewise is skilled in the matter of computations, but it seems to me he ought to have both qualifications.

Mr. SMOOT. I have no objection.

Mr. WALSH of Montana. That being the case and that safeguard being placed, it seems to me it is as far as we can go. After the board of review determines the matter, it seems to me, that is as far as the Government ought to be interrupted in the matter of the collection of its revenues. Then the taxpayer would be obliged to pay the tax and take his ordinary action at law to recover whatever he claims was exacted of him illegally.

Mr. REED of Missouri. Mr. President, the authority which the Senator read, showing the hardships that are imposed upon taxpayers in many places is undoubtedly true. The fact just the same remains as I stated that there are plenty of places where the collection of the personal tax is made by going into court. I happen to live in one of those States and the State suffers no hardship from it whatever. It collects its taxes just as well as any other State. The difference is that some of the enormities, some of the hardships and some of the brutalities visited upon the citizens are mitigated.

The talk here about this board being the final court to which a man may go before he has to pay his money sounds well when we speak about a "board of tax review," but how does it work? Right at the inception the Senator from Montana suggests that they ought to be lawyers and immediately the suggestion comes that that might not be wise. How will it work? We know how it has worked. We have had this identical board of review. It has been operating down here for four or five years, not a board authorized by law, but just such a board as we are going to get in substance and effect.

Mr. SMOOT. The board provided for in the bill is entirely out from under any influence whatsoever of the Treasury Department.

Mr. REED of Missouri. Why, its members will be suggested by the Treasury Department. Down in the Treasury Department, in order to solve the question of tax returns as they come in they set up without any authority of law boards of review.

The result is we have two or three or four of the gentlemen down there, who were engaged in the tax department, who would sit together and hear the claims that might happen to come before them. They rendered their decision. That was called the decision of the board of review. Now, we are in the bill merely authorizing that system and extending it a little bit, perhaps, by providing the members and some regulations with reference to the places where they shall sit.

All I am begging the Senate to do is before they take a citizen's property to give that man his day in court. If he makes a frivolous defense, if he does not have a good-faith defense, the court can assess him a penalty of 25 per cent. But, in any event, he must pay the costs of the suit; he must pay 6 per cent interest; he must hire an attorney to defend him. That is sufficient reason for the ordinary taxpayer to pay any tax about which there is no very grave doubt. The Government, in the first place, is going to get all the taxes where the ordinary citizen makes his return. If he makes a fraudulent or false return, he is liable to the penalties and pains of perjury and liable to the other penalties visited upon him.

The amendment would not apply at all except in cases where the Government on an ex parte hearing has gone out and raised a man's assessment above his sworn return. That is the only time there is any dispute. When that dispute comes the first thing that he confronts is his own tax return, which he can not dispute. Then he is required to show what items found against him are just or unjust; and if he contests without good reason he is liable to the penalties. If he does not raise the question at all, he must pay.

Mr. RALSTON. Can he recover any portion of his tax at any time after he has paid it?

Mr. REED of Missouri. There is no provision in any law that if a man voluntarily pays his taxes he can get them back.

Mr. RALSTON. There is no such provision?

Mr. REED of Missouri. Not in the law nor in the pending bill.

Mr. JONES of New Mexico. Mr. President, I think there is much of merit in what the Senator from Missouri has said. The matter was only considered in a general way in the committee. The Senator from Missouri never had an opportunity to present the matter to the committee for its careful consideration, certainly not with the earnestness with which he has presented it to-day. His amendment was not prepared until within the last few days.

I sincerely hope that the chairman of the committee may permit the amendment to be incorporated in the bill, and then we will have an opportunity to get more detailed evidence from the Treasury Department as to the operation of it. There is no danger of the Government losing anything by the amendment. Even if the commissioner feels that the rights of the Government are in jeopardy, he has a perfect right to distrain the property, and then when the matter gets into court, if there is any danger of the Government losing the money, attachment may issue, and so on. I happen to live in one of those States where a suit must be brought before a man's property can be distrained. It may be that in conference we can decide upon some limitation as to the amount which must be involved before the procedure is taken.

I sincerely hope the chairman of the committee may agree that the amendment may be adopted and go to conference, and we can take the matter up with the Senator from Missouri and representatives of the Treasury and find out more in detail and more specifically just how it will operate. I do not believe the rights of the Government can be jeopardized by the adoption of the amendment. It is only a question as to whether the day of payment may be delayed awaiting a proceeding in court.

Mr. SMOOT. Mr. President, I do not want to appear to accept any kind of a proposition with the understanding that I am going to fight for it in conference. I am opposed to the amendment. I am perfectly willing, at the request of the Senator, to say that it may be agreed to, but I am not going to defend it if I happen to be one of the conferees. With that understanding I have no objection to allowing it to be agreed to and considered in conference.

Mr. JONES of New Mexico. I think it had better go there.

Mr. SMOOT. I want to be perfectly understood. I do not want to be charged with being unfair. I want the Senator from Missouri to know my position. I do not believe he thinks I would be unfair.

Mr. REED of Missouri. If the Senate voted the amendment in, would the Senator from Utah feel bound then to endeavor to keep it in?

Mr. SMOOT. I think then I would be instructed by the Senate.

Mr. REED of Missouri. Unless the Senator, letting it go in in this way, would regard it as an instruction of the Senate, I would not see any use of having it agreed to. I will not be a member of the conferees. If I was going to be in the conference I would wrestle it out with the Senator there.

Mr. SMOOT. I am willing to have it go in with that understanding, or to have a vote on it. I will leave it entirely to the Senator from Missouri.

Mr. WALSH of Montana. Ought we to have a board of review at all if the amendment offered by the Senator from Missouri should be adopted?

Mr. REED of Missouri. I thought that over. My original idea came before the board of review plan had been worked out. My own notion is that the board of review may clarify the situation, and there will be very few suits.

Mr. WALSH of Montana. Mr. President, if I may express myself further upon the subject, the difficulty about it is, that under statutes of that character, which require the taxing power to go into court to establish the tax, the wisdom of the statute is questioned because there is necessary delay in the collection of revenue by going into the courts. But if these two things stand, the trouble is doubled. The proceedings are delayed while the taxpayer is going through the board of review. They are again delayed when he is going through the court. If it is proposed to have a court review of the case and a court determination, I should think it would be desired to dismiss the board of review altogether.

Mr. REED of Missouri. I think the board might serve a useful purpose. I repeat—of course, we can only guess at this procedure, for it has not been worked out—that it seems to me that the board of appeals might simplify the matter and reduce it to a very few cases. I do not see any reason why this amendment would not fit into the plan. Then, the board of review having held against the citizen, he would have his option to pay his taxes or he would have his option to await the pains and penalties that would come on him from a suit.

I am very much in earnest about this amendment. I have talked to many lawyers about it, and I have not yet heard a lawyer who has had any experience in these cases who has not hailed and acclaimed it as an opportunity for the citizen to protect himself.

Mr. WALSH of Montana. Let me suggest another consideration to the Senator, and that is this: The man of small means will take his appeal to the board of review and it is an expensive thing for him to hire a lawyer to handle his case even before the board of review. Then, if he were not satisfied with that, he would institute suit in the district court. It would go from the district court to the circuit court of appeals, and from the circuit court of appeals to the Supreme Court of the United States, the collection of the revenue for the Government meanwhile being deferred. Of course, the man of small means will not do that, but the very wealthy man who hires his lawyers by the year will naturally go the limit.

Mr. REED of Missouri. That argument, of course, as the Senator from Montana knows, may be made with reference to every other case that can be conceived of. The poor man frequently suffers a wrong that the rich man does not, but in this case if the poor taxpayer stops at the board of review he then has all the rights accorded to him that would be accorded if my amendment should not be adopted.

Mr. WALSH of Montana. But the point I am trying to make for the benefit of the Senator from Missouri is that the man of small means in all reasonable probability will stop at the board of review.

Mr. REED of Missouri. Very well.

Mr. WALSH of Montana. And the man of very great means who does not have to hire a lawyer for a particular occasion but who hires his lawyers by the year of course will go the limit.

Mr. REED of Missouri. Very well. At least my amendment takes no right away from the small taxpayer which the Senator proposes to give him. He is just as well off with my amendment as he would be without it. In addition to that if he feels aggrieved and wronged he can go into the court; he has the right to go there.

The Senator from Montana says because the poor man may not avail himself of it that the wealthy man ought to be deprived of it. I do not think it is a rich man's case or a poor man's case at all. I think the smaller tax claims and the smaller disputes will end with the board of review in all cases. In the more important ones, whether they affect the man of moderate means—for the man of very small means will not get into court at all—or the man of large means, my amendment will give the opportunity to each alike to go into court.

I know of no law which we can pass, Senators, giving equal rights to citizens that ought to be stopped in its passage because it happens that certain individuals may be better able to avail themselves of it than are other individuals. All we can do is to afford the equality of opportunity. Indeed, that is all the Declaration of Independence proposed to afford.

Mr. McLEAN. Mr. President, will the Senator permit me to interrupt him?

Mr. REED of Missouri. To say that we will not give a day in court to each and every citizen because some citizens may not avail themselves of it is to say that which can be said of every law that has ever been put upon the statute books. Now I yield to the Senator from Connecticut.

Mr. McLEAN. Let us suppose that the taxpayer appeals from the board of appeals to the district court; that the question is pending there; and that the Government brings a suit in the meantime to collect the tax.

Mr. REED of Missouri. He does not appeal. The case goes there direct by the suit of the Government.

Mr. McLEAN. It goes to the district court. Then the Government brings a separate suit to collect the tax.

Mr. REED of Missouri. No; the Senator from Connecticut has not got it right. The case does not go to the district court until the Government brings its suit. It is then in the district court for all purposes.

Mr. McLEAN. Suppose the Government prior to that time wants to institute a case. The Senator would not allow the Government to have the opportunity of instituting a suit to protect itself until after the appeal is taken.

Mr. REED of Missouri. No; the Senator from Connecticut has not got that right. Under the law as proposed to be passed here the Government would have no right to bring any suit until the case goes through the board of appeals. That is the proposition. Up to that point there is no change made. What happens when the board of appeals has decided? The question then is, Shall the property of the citizen be sequestrated, or shall the Government first establish its right to this additional tax in a court? That is the only difference.

If the Senator from Utah desires to accept the amendment which I have offered in order to save time, even with the statement he has made, and let it go into the bill, I shall undertake to try to thrash it out hereafter. I had rather have a vote, and I understand that some of the Senators are going away, and that there is a situation here which requires action on the bill.

Mr. SMOOT. With the reservations that I have already made, I have no objection to the amendment going into the bill. As I understand, the Senator says that is satisfactory to him.

Mr. REED of Missouri. Very well.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Missouri.

The amendment was agreed to.

Mr. REED of Missouri. Mr. President, I offer the amendment which I send to the desk, which I hope——

Mr. WALSH of Montana. May I say to the Senator from Missouri that I have already presented certain amendments which I desire to submit. They are in connection with the very subject which has been under consideration. Would the Senator object to my submitting those amendments now?

Mr. REED of Missouri. No; I will yield to the Senator from Montana for that purpose.

Mr. WALSH of Montana. Mr. President, on page 236, after the word "board"——

Mr. SMOOT. Mr. President, the committee amendments affecting that question have been agreed to. If the Senator will make a reservation, when the bill gets into the Senate, he can then offer the amendments he wishes to offer.

Mr. WALSH of Montana. Very good.

Mr. SMOOT. Otherwise, we would have to reconsider the amendments which have been agreed to, and there may be some Senators who would want to be present when that is done.

Mr. WALSH of Montana. I will be glad to act on the suggestion of the Senator.

Mr. REED of Missouri. Since the Senator has raised the point of reconsideration, the Senator will remember that I have reserved this amendment, and I assume that the record will have to show a reconsideration in order to offer it.

Mr. SMOOT. What amendment is that?

Mr. REED of Missouri. The amendment which has just been agreed to.

Mr. SMOOT. That was understood and the record will show that it was agreed that the amendment to which it was an amendment should be reconsidered.

Mr. REED of Missouri. And that has been reconsidered?

Mr. SMOOT. That has been reconsidered.

Mr. REED of Missouri. Very well.

Mr. President, if we are to take the course just suggested with reference to amendments proposed by the Senator from Montana, I offer the following amendment which I hope may be accepted to amend paragraph 10 of section 231 by inserting after the word "companies," in line 7, on page 84, the following:

Or casualty- or fire- or reciprocal- or inter-insurance exchanges.

Mr. SMOOT. I understand that there are only a very few small companies in the United States in that category and I have no objection to the amendment.

Mr. REED of Missouri. I understand that these exchanges pay no taxes anyway, but are required to make returns.

Mr. SMOOT. I will ask unanimous consent that the amendment be adopted at this time.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Missouri.

The amendment was agreed to.

Mr. WATSON. Mr. President, I offer the amendment which I send to the Secretary's desk and ask that it may be read.

The PRESIDING OFFICER. The amendment will be stated.

The PRINCIPAL CLERK. On page 245 it is proposed to add the following subdivision to section 1106:

SEC. 1106. (a) That in any case where a tax has been paid to and collected by the United States Government under any excise tax law in force at the time of payment, and after January 1, 1917, and subsequently the amount collected shall have been refunded to the taxpayer by the Government without being required to do so by a decision of a court of competent jurisdiction and where the articles of property taxed have passed from the possession and ownership of the taxpayer, said taxpayer shall not again be assessed or taxed, and no demand shall again be made by the Government for a tax for the same lease or sale thereof: *And be it further provided*, That where said taxpayer has been so reassessed or retaxed, said levy, assessment, or tax shall be abated, and in case the tax or any part thereof has been paid after demand, the amount so paid shall be refunded to said taxpayer in the manner provided under this act.

Mr. SMOOT. Mr. President, that is what is known as the retroactive sales tax, is it not?

Mr. WATSON. No; it is not universal in its application. I can explain it in a moment or two.

Mr. SMOOT. Will the Senator allow me to see the amendment?

Mr. WATSON. Certainly.

Mr. WADSWORTH. While the Senator from Utah is looking at the amendment, will the Senator from Indiana yield to me?

Mr. WATSON. I will be delighted to do so.

Mr. WADSWORTH. Mr. President, I merely desire to consume about a minute, perhaps a minute and 30 seconds, of the time of the Senate. Toward the end of last week the Senate adopted an amendment providing for a complete publicity of income-tax returns. In view of the possibility of the enactment of such a provision as a part of the revenue law of 1924 I anticipate that something like the following advertisement may appear in a prominent daily newspaper along about September 1 of this year. I ask the Secretary to read it.

The PRESIDING OFFICER. Without objection, the Secretary will read as requested.

The principal clerk read as follows:

[Advertisement appearing in a daily newspaper about September 1, 1924]

What did he pay for it?

What did he sell it for?

What were his expenses for labor, material, supplies, and rent?

How much does he owe?

What interest does he pay?

What bad debts does he carry on his books?

Does he pay alimony?

Don't you want to know these things about your neighbor and business rival?

We can get all this information for you and a lot more about his business, domestic affairs, and method of living from his income-tax return right here in Washington.

Don't travel.

Drop us a line and we will send you in a plain, unmarked envelope our schedule of rates.

Everybody's doing it!

Our service is of especial value to politicians and prospective candidates for office.

The Haveluk Company, Spy Building, Eye Street, Washington, D. C. Paul Pry, president; Thos. Peeper, vice president. Telephone, Peek-a-boo-double "O." Cable address, Keyhole.

Mr. WATSON. Mr. President, a recital chronologically of the incident which led up to the formulation and offering of this amendment may best illustrate and enforce it.

Leaf springs were assessed regularly and in accordance with due process of law, and the tax was paid. Thereafter, on a contest, the taxes were ordered refunded. I can throw light on the subject by reading from the letter of the Commissioner of Internal Revenue, in which the plea of the taxpayer was granted and the taxes ordered refunded.

Article 15 of regulations 47 defines an automobile part—

This was a tax on leaf springs, I will say—springs that enter into the manufacture of automobiles and motor cycles and buggies and carriages and vehicles of all kinds and characters.

Article 15 of regulations 47 defines an automobile part—

And these had been originally taxed as automobile parts in that section of the tax bill that I shall not take time to read.

Article 15 of regulations 47 (revised) defines an automobile part as any article designed or manufactured for the special purpose of being used as or to replace a component part of an automobile or motor cycle, and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use, and which is primarily adapted only for use as a component part of an automobile or motor cycle.

It appears from your brief that vehicle leaf springs in their present form and design have been in use for a great many years and were used long before the advent of the automobile; that they had been for many years and are to-day used for a great many purposes other than in automobiles; that exactly the same spring in type and otherwise can be and is used for automobile and other purposes; that there is nothing in the design or construction of the ordinary vehicle leaf spring used on automobiles to make it primarily adapted only for such use, and that it may be and is used for other purposes; and that of the leaf springs sold the vast majority are sold for purposes other than use on automobiles.

In view of these facts, the bureau now takes the position that vehicle leaf springs, as distinguished from highly specialized leaf springs such as auxiliary shock-absorbing devices using the leaf-spring principle, which are not primarily adapted only for use as a component part of an automobile or motor cycle are not subject to tax under section 900 of the revenue acts of 1918 or 1921.

Holding that this tax had been illegally collected, and that there should be a refund of the taxes. Shortly after that time circulars were sent out to all the manufacturers explaining to them how they could apply for and obtain the refund. They did apply for the refund and obtained it, and it was paid to the manufacturers. After that, another circular was sent out by the department instructing these manufacturers of automobiles that inasmuch as they had collected the taxes from the jobbers, and the jobbers in turn had collected them from the customers, the taxes should be refunded by the manufacturers to the jobbers, and by them on down to the purchasers, and in many instances this was done. Some of them paid it all back; some paid back a portion of it, waiting for the final signature of the Secretary of the Treasury before paying back all the taxes.

This was the condition when, on December 17, 1923, after a period of 15 full months, there came an order like a bolt from the blue sky—because nobody apprehended it or knew it was coming—ordering that all of these taxes should be immediately paid, and giving 10 days in which to pay them into the Treasury.

What was the situation? Most of these men could not pay these taxes. They did not have the money. They could not get the money. One of my constituents in Richmond, Ind., was ordered immediately to pay $136,000 of taxes. He could not go and borrow that money. He did not have it. He could not get it. In good faith he had paid the tax originally. In good faith he had made the claim for the refund. The refund had been ordered, and a portion of this money had been distributed. Two other constituents of mine in Indiana under like circumstances had distributed all of the fund. They are now ordered summarily to pay it in, and they are not able to pay it back.

Under the law they could pay the tax, wait six months, and sue; but the trouble about it is that these gentlemen can not pay the tax. They can not meet this order. They can not measure up to this demand; and the result of this illegal process—and I call it illegal because it is wholly unfair—by the Treasury Department is that several of these gentlemen will be bankrupt and driven on the rocks simply because of this conduct of the Treasury Department.

These refunds were ordered by the commissioner, and there is the letter. I have read it. The contest was made in good faith. The money was paid back. These gentlemen refunded it. Now they are ordered to go out and get it. When they undertake to go and get it from the jobber, or go back to the customers, they find some of them out of business, they find some of them have gone bankrupt themselves, and they are unable to collect these taxes; and as a result of this unfair treatment by the Treasury Department of citizens of the United States engaged in a legitimate enterprise several of them are going to be entirely put out of business and bankrupt.

This amendment is offered simply to cure that difficulty. It provides as follows:

That in any case where a tax has been paid to and collected by the United States Government under any excise tax law in force at the time of payment and after January 1, 1917, and subsequently the amount collected shall have been refunded to the taxpayer by the Government without being required so to do by a decision of a court of competent jurisdiction, and where the articles of property taxed have passed from the possession and ownership of the taxpayer, said taxpayer shall not again be assessed or taxed, and no demand shall again be made by the Government for a tax for the same lease or sale thereof: *And be it further provided*, That where said taxpayer has been so reassessed or retaxed, said levy, assessment, or tax shall be abated, and in case the tax, or any part thereof, has been paid after demand, the amount so paid shall be refunded to said taxpayer in the manner provided under this act.

So that it is confined to a specific case where an assessment has been made, where the tax has been refunded, and then where another tax has been levied. It provides that that tax shall be abated where it has not been paid, and where it has been paid that it shall be refunded. I am very glad to say, however, that none of the taxes thus assessed have been paid this second time, and so no money will be taken out of the Treasury; and it is only a question of the abatement of this

tax which under the circumstances I believe to be absolutely unfair. I believe that the Government has no right to treat its citizens in that manner, and therefore I think that notwithstanding the fact that this is retroactive, it is retroactive only in the interest of fair dealing as between the Government and its citizens.

Mr. SMOOT. Mr. President, the committee decided that they would not make a claims bill of this revenue measure; but there has been retroactive legislation, and I will leave it entirely to the Senate as to whether they want to put this in or not. This is a claim against the United States, and if the Senate wants to put it upon this bill, well and good.

The PRESIDING OFFICER (Mr. STERLING in the chair). The question is on the amendment of the Senator from Indiana.

The amendment was agreed to.

Mr. WATSON. Mr. President, just in the same line, to cover this same transaction when the money has been paid out, I offer another amendment. It cures the whole thing, and that is what I am after—a cure-all.

The PRESIDING OFFICER. The Senator from Indiana offers a further amendment, which will be stated.

The READING CLERK. It is proposed to add to section 1108 the following:

(a) No excise tax shall be levied, assessed, or collected by the Commissioner of Internal Revenue on any article of property sold or leased by the manufacturer, producer, or importer where at the time of said lease or sale there was an existing ruling, regulation, or Treasury decision holding or construing that said article of property, or the lease or sale of same, was not taxable, and where the manufacturer, producer, or importer parted with possession or ownership of said article of property relying upon said ruling, regulation, or Treasury decision.

The PRESIDING OFFICER. The question is on the amendment offered by the Senator from Indiana.

The amendment was agreed to.

Mr. WILLIS. Mr. President, I offer the amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The READING CLERK. On page 233, at the end of line 10, it is proposed to insert a new sentence, to read as follows:

This subdivision shall take effect upon the enactment of this act.

Mr. SMOOT. Mr. President——

Mr. WILLIS. It is not necessary for the Secretary to read the others. If I may explain this amendment to the Senator for a moment, I think he will not object to it.

Mr. SMOOT. I know exactly what this amendment means. Does the Senator want to offer another amendment?

Mr. WILLIS. If this shall be adopted, there are two others that ought to go with it. It corrects the bill. Of course, it is not necessary to offer them unless this shall be adopted. I thought the Senator undoubtedly would accept this amendment.

Mr. SMOOT. I would if it were possible of administration; but how on earth can a manufacturer of playing cards know the hour when the President of the United States will sign this bill?

Mr. WILLIS. The usual principle of law will apply there. The law does not take cognizance of a fraction of a day. They will know the day when it is signed.

Mr. SMOOT. Mr. President, I should like to collect that 30 days' tax. I should be delighted to get it into the Treasury of the United States; and if the Senator thinks that it can be administered successfully, I am perfectly willing to accept that amendment.

Mr. WILLIS. I wish the Senator would accept it.

Mr. SMOOT. I will accept it, Mr. President, because it simply means that instead of giving 30 days' time for them to make a sale before this tax applies, it applies immediately upon the passage of the bill. I want to say to the Senator also that I know it is going to be beneficial.

Mr. WILLIS. I think it ought to be said that this amendment is a most unusual one in that it comes from perhaps the largest manufacturer of this particular commodity——

Mr. SMOOT. I know that.

Mr. WILLIS. And he is not complaining about the increased tax, but is asking that the law take effect 30 days earlier than the bill provides, so that the Government will have about $200,000 more money, and he, incidentally, will avoid some bother.

I thank the Senator for accepting the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Ohio.

The amendment was agreed to.

Mr. WILLIS. The other two amendments are to correct the bill, or to amend other sections, so as to bring them into harmony with this.

Mr. SMOOT. I will see what the other two amendments are.

Mr. WILLIS. They ought to be stated.

The PRESIDING OFFICER. The Secretary will state the next amendment offered by the Senator from Ohio.

The READING CLERK. On page 275, line 16, after the second parenthesis, it is proposed to insert:

Except subdivision (12) of Schedule A, and——

Mr. SMOOT. That is necessary in order to conform to the amendment that has just been agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Ohio.

The amendment was agreed to.

Mr. WILLIS. I desire to offer an amendment, to come in at page 200, at the end of line 4.

The PRESIDING OFFICER. The Secretary will state the amendment.

The READING CLERK. On page 200, at the end of line 4, insert:

Or for eyeglasses and spectacles sold or leased for an amount not in excess of $40.

Mr. WILLIS. Mr. President, it will be observed that the proposed amendment is in the section that makes exemptions. As the bill passed the House, it provided in line 23, page 199:

The tax imposed by subdivision (a) shall not apply to (1) surgical instruments, musical instruments, eyeglasses, spectacles, or silver-plated flat tableware.

The committee has made an amendment striking out the words "spectacles and eyeglasses," so that they would not be exempt. It seems to me that the amendment which the committee has proposed is hardly a desirable one. Spectacles and eyeglasses are not in the nature of luxuries. There are a good many so unfortunate physically as to absolutely need those articles. It appears to me that is not a very good source of revenue. I should have preferred the bill as it passed the House, but the amendment I have offered would exempt eyeglasses and spectacles costing under $40.

Mr. SMOOT. The bill excepts eyeglasses and spectacles up to $25. Nobody pays a tax on a pair of spectacles unless they cost more than $25. It does seem to me that that exemption is ample, and it seemed that way to the committee.

Mr. WILLIS. Will the Senator permit me to invite his attention to the fact? It is not a pleasant subject to discuss, but the more distressing the case of eye trouble, the more certain it is that the exemption the Senator proposes in the bill would not be effective, because, as the Senator knows, lenses that are necessary for very serious cases of eye trouble cost at least $25 without the mounting. With that situation, it seems to me that the figure should at least be enough more than that amount to cover the cost of the cheapest kind of frame.

I take that as a tentative figure. Would not the Senator agree to have it made $30 or $35? I do not like to have it said that the Senate by this legislation is levying a tax upon those very necessary articles which can not be denominated under any circumstance as luxuries.

Mr. SMOOT. I have not heard any complaint about the tax in the existing law and the limitations.

Mr. WILLIS. Of course my experience is different. I have heard some complaint.

Mr. SMOOT. I recognize that eyeglasses and spectacles are put in here, and the House fixed a figure at $40. The House fixed $40 also on the other articles, surgical instruments, musical instruments, and silver-plated tableware.

Mr. WILLIS. It seems to me there is more reason for an exemption on eyeglasses and spectacles than on flat tableware. That, perhaps, is not so nearly a necessity. For anyone who can not read a line without spectacles or eyeglasses the eyeglasses and spectacles are necessities, and I dislike to be put in the position of having to say that the Senate decided to levy a tax upon those absolutely necessary articles.

Mr. SMOOT. I think we have received 10 letters against the silver-plated tableware tax to one in regard to the eyeglass tax. I do not know why it is.

Mr. SIMMONS. I have had quite a number of protests from constituents of mine against the tax on eyeglasses.

Mr. WALSH of Massachusetts. What is the revenue from the tax on eyeglasses?

Mr. SMOOT. I could not tell the Senator the revenue under the eyeglass provision, but I can tell him what it would be under the whole paragraph.

Mr. WALSH of Massachusetts. How much is it for the whole paragraph?

Mr. SMOOT. Under the present law, $10,000,000, and it is estimated that the revenue derived under the bill as it passed the House of Representatives would be $4,000,000 on the basis of $40. The estimated jewelry tax for 1924, including all jewelry, is $10,750,000. I suggest that we let it go to conference.

Mr. SIMMONS. I think it is all right to let it go to conference.

Mr. WILLIS. Very well, if the Senator can give us some assurance. I do not desire to be contentious about it, but I do think it is a mistake not to make a proper provision in this place. Would the Senator accept an amendment? Suppose I set the figure at $40?

Mr. SMOOT. Applying merely to spectacles?

Mr. WILLIS. To spectacles and eyeglasses.

Mr. SMOOT. Let the amendment be read.

The PRESIDING OFFICER. The amendment will be reported.

The READING CLERK. On page 200, at the end of line 4, after the numerals "60" and before the period, insert the words "or for eyeglasses and spectacles sold or leased for an amount not in excess of $40."

Mr. WILLIS. I will modify the amendment so as to make it $30.

Mr. SMOOT. I will accept that amendment.

Mr. WILLIS. Very well. I so modify it and will let it go to conference.

The PRESIDING OFFICER. Without objection, the vote by which the amendment of the committee was agreed to will be reconsidered, and the question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. SIMMONS. Mr. President, one of the substitute amendments offered by myself relates to the income taxes, and that has not been acted upon because it was not in order before. It is an amendment with reference to the exemption. But in view of a suggestion made to me by the chairman of the committee, I will not press it at this time.

Mr. WADSWORTH. Mr. President, I offer an amendment which I ask the Secretary to read.

The PRESIDING OFFICER. The Secretary will state the amendment.

The READING CLERK. On page 274, after line 10, the Senator from New York proposes to insert:

SEC. 1131. Where any provision of any act specified in section 281 (a) of this act or the application thereof to any person or circumstances has been held to be invalid, or any interpretation placed thereon by any of the executive departments has been held to be incorrect (1) by the Supreme Court of the United States or (2) by decision of a United States Circuit Court of Appeals which becomes final, any tax illegally collected pursuant to such provision shall be credited or refunded if a claim therefor is filed by the taxpayer within four years after such decision notwithstanding any other statutory period of limitation providing to the contrary.

Mr. SMOOT. Mr. President, this amendment was considered very carefully by the committee. It means that, notwithstanding the period of limitation, anyone who may now want to make a claim against the Government can do so. There has to be some time when the question is settled, and the committee thought this was a very dangerous proposition. I hope the Senate will not agree to it.

Mr. WADSWORTH. The Senator from Utah has condemned it wholesale, but I do not think he has told the entire story at that.

On page 136 a committee amendment will be found which strikes out the language from line 3 to line 11, inclusive. The House language is stricken out. The House approached this question about halfway and provided that—

(d) Where any provision of any act specified in subdivision (a) of this section or the application thereof to any person or circumstances has been held by the Supreme Court of the United States to be invalid, any amount of income, war-profits or excess-profits tax illegally collected pursuant to such provision shall be credited or refunded if a claim therefor is filed by the taxpayer within four years after the decision, notwithstanding the period of limitation provided for in subdivision (b) has expired.

The Senate, on the recommendation of the committee, has stricken that out, and, as I understand it, that throws the law back to the old situation, in which the taxpayer must have filed his claim for refund within four years of the date of having paid the tax.

Mr. SMOOT. The Senate has already agreed to that amendment.

Mr. WADSWORTH. I know it; I am not touching that amendment. I am merely referring to it as a step proposed by the House. The step I propose does not conflict with the Senate amendment, which has been agreed to, but is to be inserted at the end of the bill and to cover all kinds of taxes.

Mr. SMOOT. It goes further than the House provision.

Mr. WADSWORTH. It does, and in common justice it should. Let me have the attention of the Senators who are present.

The big taxpayer, the big corporation, which pays heavily, is assessed or is about to be assessed by the Internal Revenue Bureau. They may employ attorneys at considerable expense, and it is well worth while for them to do so. They bring a test case in the court. Those cases go either to the circuit court of appeals in the district in which the case is brought or may go to the Supreme Court of the United States. It takes some time for the decision to be reached either by the circuit court of appeals or by the Supreme Court.

The big taxpayer, being well advised by competent legal advice, competent counsel, is well aware of the possibility of enforcing its contentions. The little taxpayer away off in the country somewhere never hears of it. It may take two or three years before the case will finally be decided by the court, whichever court makes the final decision.

If the court sustains the contention of the taxpayer in that case, that big taxpayer gets his money back. In the meantime the statute of limitation is running against the little man who has no opportunity, owing to his modest means, of following up things of that sort. He can not employ counsel to follow these things along.

What does this amendment propose to do? It proposes that in the case of any tax—income tax or surtax or excess-profits tax in the past; any tax covered in this act—whenever the Supreme Court declares a tax illegally assessed or invalid on constitutional grounds or otherwise, or wherever the circuit court of appeals declares the assessment or the collection invalid, and that decision of the circuit court of appeals is final, which is the case in a great many instances; thereupon all other taxpayers, great or small—and most of them are small—may take advantage of that decision and shall have this period of time in which to file their claims for refunds. In other words, the law as at present written, with a limitation placed upon the filing of claims for refunds, operates solely to the advantage of the rich man who can employ competent counsel to push his case through the court, but the little man off in the country is left helpless.

Mr. REED of Missouri. If the Senator will pardon me—

Mr. WADSWORTH. I yield.

Mr. REED of Missouri. I feel very great sympathy for the Senator's suggestion when he proposes to write into the law a provision that a decision of the court of appeals having been rendered allows the taxpayer to bring these claims. What would he do if we had opposing decisions by the court of appeals? If it is made to rest upon a decision of the Supreme Court of the United States we could regard that fairly as a finality. But one court of appeals might decide a question one way and another court of appeals might decide a similar question another way.

Mr. WADSWORTH. I think the language of the amendment takes care of that subject. It reads:

When such a tax has been declared invalid, first, by the Supreme Court of the United States or, second, by decision by the United States Court of Appeals, it becomes final.

Only in that case does it become final. The great majority of them are never appealed to the Supreme Court.

Mr. REED of Missouri. It might become final in that particular case. Another court of appeals might, however, reach a different conclusion in another case involving the same matter, as they frequently do.

Mr. WADSWORTH. Then it is up to the Government, as I understand it, to appeal from the circuit court to the Supreme Court. In that case it is not final.

Mr. REED of Missouri. No; not if that is done. It is entirely conceivable that the court of appeals might render a decision in a case holding a certain tax is invalid; that thereafter the case should be brought again in the same or another circuit and that a different conculsion should be reached, and that the Supreme Court would finally affirm the decision of the second court of appeals. In the meantime a taxpayer has

brought his suit against the Government demanding a refund of his taxes. He bases it upon the fact that the court of appeals has declared the law to be invalid. I can see great difficulty in the amendment of the Senator unless he limits it to the Supreme Court of the United States, because it is difficult to say when, if ever, a decision of the court of appeals that a law is valid or invalid is in fact an absolute finality.

Mr. WADSWORTH. Am I incorrect in stating that under one of our statutes, and I do not know which one, the decision of the circuit court of appeals is deemed final upon a tax matter?

Mr. REED of Missouri. Suppose there is another tax suit brought in another district?

Mr. WADSWORTH. Then, I believe, it is within the power of the Supreme Court to bring it up to its jurisdiction by writ of certiorari.

Mr. REED of Missouri. That is true, of course, but it may not be done. I am thinking of that difficulty and calling the Senator's attention to it.

Mr. FLETCHER. In the case of a variety of opinions by the court of appeals, it would be the duty of the Government to take a case to the Supreme Court of the United States and thereby obtain uniformity of opinion.

Mr. WADSWORTH. That is what happens.

Mr. REED of Missouri. But what happens in the meantime with a law that is drawn where there is a final decision of the court of appeals that the tax shall be refunded and after that another court of appeals reaches a different decision, and the second court is affirmed by the Supreme Court of the United States?

Mr. WALSH of Montana. And from which decision would the four years run? Here is a decision made by the circuit court of appeals on the 1st day of June, 1924. That is final, and there is no occasion for a review by certiorari. On the 1st day of December, 1924, a second decision is made, and now there is a conflict in the two, and a writ of certiorari is taken from the decision of December 1. From what time is the four years to run, from the decision made June 1 or the decision made December 1? The Senator may be correct, but it would be news to me to know that there is any statute making a tax-case decision final in the circuit court of appeals.

Mr. WADSWORTH. I hesitate to combat recollections and opinions of men learned in the legal profession, but I am quite certain there is a statute which makes decisions of the circuit court of appeals final in revenue cases.

Mr. WALSH of Montana. May I ask the Senator if there is any such limitation provision in any statute?

Mr. WADSWORTH. I am sure I do not know.

Mr. WALSH of Montana. If there is none, of course the wisdom of the ages must be against the proposition.

Mr. WADSWORTH. I am not so sure that the wisdom of the ages holds good when we reach our complicated tax laws, where we are taxing in the most complicated fashion millions of people.

Mr. WALSH of Montana. I was going to say to the Senator that the same principle extends throughout all manner of litigation. Here are half a dozen men who have the same kind of a controversy—that is, one in which the same legal principle is involved. One of them institutes a suit, and he takes it to the Supreme Court and eventually establishes a principle. Exactly the same principle is involved in the case of a multitude of men, but the statute of limitations has run against them. No statute of limitations such as the Senator suggests, so far as I am aware, has ever been suggested by anybody. For instance, men have been hung upon one construction of the law, when finally some one takes an appeal to the Supreme Court of the United States and it is determined that the law as construed by the lower court was wrong. Why make any exception in the case of a tax payment? Here is a man who has lost valuable property upon the assumption that the law was so-and-so. Another man, more litigious in character, resists the proposition and takes his case to the court and eventually gets a decision of the Supreme Court, but the statute of limitations has run against the man who has laid by.

Mr. WADSWORTH. "Who has laid by" is scarcely an accurate description of his predicament. It has been impossible for him to take advantage of the case. He has not had the money nor the opportunity.

Mr. WALSH of Montana. That is exactly the situation that I am presenting to the Senator.

Mr. WADSWORTH. I want to give the man a chance. If the amendment is not right in its detail, I would like to see that man have the same chance to get his money back after the other man has proved it never should have been taken away from him.

Mr. WALSH of Montana. I am pointing out to the Senator that the same condition applies to all manner of litigation. The man who does not or is not able to take his appeal or to litigate the matter eventually has the statute of limitations run against him, either because he is unwilling or unable to prosecute the case further. Finally some one who is able or willing to do it takes the matter up and an adjudication is had, but the poor man who did not appeal has lost his valuable farm by reason of the erroneous view of the law taken by the lower court.

Mr. WADSWORTH. It may occur in some States.

Mr. WALSH of Montana. Oh, it occurs in all States with reference to all matters of litigation. The statute of limitations runs from the time the cause of action arises. That is the rule. It does not run from the time subsequently that some one gets a decision from the court of last resort. I do not think there is any such statute.

Mr. WADSWORTH. What does the Senator believe the justice of the situation demands?

Mr. WALSH of Montana. The justice of the situation demands a statute of limitation of reasonable length, and that is all, from the time the cause of action arose and not from the time the court might decide it the other way.

Mr. WADSWORTH. That would leave out everybody who had not had notice.

Mr. WALSH of Montana. It is not a matter of notice at all, because everyone has notice under the law. Besides, I think it is a very unwise thing to have people standing by waiting for some one else to prosecute litigation of which they expect to take advantage.

Mr. WADSWORTH. The Senator would not deny that that is a common practice? Test cases are brought in all kinds of matters.

Mr. WALSH of Montana. I am well aware of that.

Mr. WADSWORTH. And a crowd stands by waiting to see the outcome of the test case.

Mr. SHORTRIDGE. Mr. President, I desire to address myself immediately to some thoughts advanced by the Senator from Missouri [Mr. REED] and the Senator from Montana [Mr. WALSH]. I am particularly interested in that portion of the proposed amendment which reads:

> Where any interpretation placed there by any of the executive departments has been held to be incorrect.

I ask the respectful attention of my brother Senators. California is what is called a community-property State. There are some seven of the States in the Union, I think, who have that system of property, and they are spoken of, as lawyers know, as community-property States. Some years ago there was an opinion rendered by the Department of Justice to the effect that in California husband and wife could not file separate returns as to income arising from community property. It was held that the community property, under dominion of the husband during coverture, was to be regarded as his separate property in so far as making income-tax returns and amount of income taxes were concerned. The Department of Justice also held that the interest the wife had in community which passes to her upon the dissolution of the marriage was subject to Federal inheritance tax law.

Mr. Wardell, the then collector of internal revenue in California, appointed by President Wilson, considered the subject. After the ruling made by the Department of Justice there was an action commenced for the purpose of interpreting the law. That action is known as the case of Wardell against Blum. Judge Rudkin, then a judge from the eastern district of Washington, recently promoted to the circuit bench, rendered a decision in that case in which he held and decided that the wife had a vested right in the community property.

Of course, community property is that which is acquired after marriage other than by gift, descent, or devise. He held that the wife had a fixed, definite, vested interest in the community property; that she, therefore, was not an heir to the husband but that she was a survivor and took as one partner might take upon the dissolution of the partnership; that inasmuch as she was not an heir of the husband the one-half of the community property to which she succeeded was not subject to the Federal inheritance tax. That case was argued very elaborately before Judge Rudkin and was followed by the decision which I have stated. The Government thought it proper, as it was, to prosecute an appeal to the circuit court. The circuit court affirmed that decision.

Now I come to the point suggested by certain Senators. It is the law that in matters of revenue a decision of the circuit court is final, subject to the power of the Supreme Court to issue a writ of certiorari in order to harmonize any conflicting decisions which may be handed down by the different circuits.

Therefore the Government, not being satisfied with the decision of Judge Rudkin, not satisfied with the decision in the ninth circuit court affirming his decision, applied to the Supreme Court for a writ of certiorari. The Supreme Court, having before it the decision of Judge Rudkin, the decision of the ninth circuit court, and the elaborate briefs which were filed in support of the issuance of the writ, after due consideration, finally denied the writ. As lawyers know, that was tantamount to an affirmance of the decision of the ninth circuit court. Even then, though the writ was denied, which was tantamount to an affirmative, the Solicitor General, Mr. Beck, deemed it his duty to make an extraordinary motion in the Supreme Court.

I use the word "extraordinary," but perhaps I should say an unusual motion. He made a motion that the Supreme Court recall or revoke and annul its order denying the petition for a writ of certiorari. His motion was accompanied by a brief and he gave reason why he made that unusual motion. He argued that there were certain other cases pending or which might be brought and which if they reached the Supreme Court might result possibly in a different interpretation of the statute. He stated that if the Supreme Court of California, which had before it a certain case, should decide that case in such and such a way, then and in that event he would withdraw his motion.

The Supreme Court of California in due season rendered a decision—the one anticipated—and thereupon Mr. Beck appeared before the Supreme Court and asked to withdraw his motion for the revocation of the order made in denying the application for a writ of certiorari.

Mr. BAYARD. Mr. President, may I ask the Senator a question?

Mr. SHORTRIDGE. Yes.

Mr. BAYARD. Was the subject matter which was before the California Supreme Court the same subject matter as that which was before the United States Supreme Court?

Mr. SHORTRIDGE. Answering the Senator, I will say it was a case which involved the respective rights of husband and wife to community property, and it was argued that the decision of the Supreme Court of California would or might have a decisive bearing on the final decision of the Blum *v.* Wardell case.

Mr. BAYARD. Was the principle involved the same?

Mr. SHORTRIDGE. The Solicitor General deemed it necessary, as a legal matter, to call the then pending case in the California Supreme Court to the attention of the Supreme Court of the United States. The Supreme Court of California, having decided that case as it did and as anticipated by many, thereupon the Solicitor General appeared in our supreme court, and, by permission, withdrew his motion, as I have stated.

The importance of this matter lies right here: In the meantime, believing as I did that the decision of Judge Rudkin was correct, that the decision of the circuit court was correct; believing further that the Supreme Court of the United States had thoroughly considered the subject matter before it denied the petition for the writ of certiorari—believing, in a word, that the law had been definitively decided, that it was settled, I called upon the Commissioner of Internal Revenue, Mr. Blair, to follow that decision. I suggested that the law, which had been in controversy and had been agitated in this litigation, had been finally and definitely determined. I said, and now say, that the decision was to the effect that the wife in California upon the death of her husband did not take as an heir of the husband but as a survivor, and hence that her portion of the community property is not subject to the Federal inheritance tax.

Mr. Blair very properly said, among other things, that he was being governed by the early ruling of the Department of Justice, to which I have made reference, and that under the precedents and following the custom he was obliged to follow the interpretation of the statute as it had been handed down by the Department of Justice.

Senators will readily see that I replied by saying: "Even so, but in the case of Wardell against Blum the decision is to the contrary. We have the district court decision; we have the circuit court decision; we have the Supreme Court decision; and therefore you should now follow the law as it has been judicially determined." He referred me to his solicitor, Mr. Hartson. I called upon Mr. Hartson and went over the whole subject with him.

It may not be improper for me to state that I was somewhat familiar with that problem, having engaged in what is regarded as the leading case in California, the case of Spreckels *v.* Spreckels, which is cited in all these opinions. I conversed with Mr. Hartson and explained to him what I am now taking the liberty to state to other Senators, and referred him to certain cases and certain propositions of law. Thereafter I called upon Mr. Mellon, the Secretary of the Treasury, and went over the whole subject matter with him. He requested me to address him a letter setting forth the matters to which I have thus referred. On the 6th of December last I addressed a letter to the Secretary of the Treasury in which I reviewed the case of Blum *v.* Wardell, as I have here done to the Senate. On the 12th of December last the Secretary of the Treasury replied to my letter, stating that, in view of what I said and of the cases to which I invited his attention, he was calling upon the Department of Justice for another opinion in respect to the matter.

That was on the 12th day of December last. He added that such request has gone forward to the Department of Justice. Upon inquiry, of course I found that such was so. Thereupon the Department of Justice set about to study this problem again and to examine the case of Wardell against Blum, to the end of determining whether the original opinion handed down by the Department of Justice was correct or should be modified or withdrawn and a new opinion issued in accordance with the law as decided in the Wardell against Blum case, as I have stated.

Due doubtless to many cases submitted to them, the multiplicity of duties, there was considerable delay, and it is not improper for me to state that I conversed with the President in regard to it and later addressed him a letter upon the subject. A few weeks ago—I have not the date now in mind, but it was within perhaps the last six weeks—there was handed down a very elaborate decision by the Department of Justice, overruling or reversing the earlier opinion and deciding that the wife in California, which is a community property State, takes as survivor, not as heir, and hence her community property is not subject to the Federal inheritance tax. All this I have explained to brother Senators in order that they may now see the interest I take in this proposed amendment.

Under the rulings formerly made and followed, the wife in California was not permitted to file her separate income-tax return for income derived from community property during coverture, and her right to do so was also involved in this discussion and in these decisions. She was subjected to the payment of a Federal inheritance tax on that portion of the community property which came to her upon the dissolution of the marriage.

What I am interested in is this: As I understand this proposed amendment, the interlineation, in particular, provides that where any provision of any act specified in section 281 (a) of this act, or the application thereof to any person has been held to be invalid, or any interpretation placed thereon by any of the executive departments has been held to be incorrect—as, for example, the erroneous interpretation placed upon this law as it bears upon income from community property and the right of the surviving wife—then the wife, who was, first, illegally deprived of her right to file a separate income-tax return, or second, was subjected illegally, as we now know, to the payment of an inheritance tax, may make application for a refund within four years after such erroneous interpretation of the statute decision, notwithstanding any other statutory period of limitation providing to the contrary.

Whereas some of those who have been illegally subjected to the Federal inheritance tax still have time to make application for a refund, and some of those who were denied the privelege of filing separate returns may still be within the statutory period to make such returns and ask for a refund, there are many who are not within the statutory period as it is now fixed by the law; and therefore it has seemed to me just that if a tax has been illegally imposed and illegally collected, the Government should be willing to restore that amount, and to that end enlarge the statute of limitations, as proposed by this amendment.

Mr. WALSH of Montana. Mr. President, I should like to ask the Senator this question: In the State of California, if a man pays a tax exacted of him under a construction of the statute given to him by the taxing agent, and afterwards some one else resists the tax and takes the case to the Supreme Court of the State of California, which adjudges that his contention is correct, showing that the tax was illegally collected of the person first named, does the statute of limitations commence to run against that person from the time of the decision in the other case?

Mr. SHORTRIDGE. The statute of limitations, I should say, commences to run—as it does, indeed—from the time when the cause of action arises, unless something intervenes to suspend the running of the statute.

Mr. WALSH of Montana. When he paid the tax. In other words, the principle for which the Senator contends as applicable to the Federal system of taxation has never been in vogue in his State with reference to State taxation?

Mr. SHORTRIDGE. As I understand, the Federal statute of limitations is now four years, I believe.

Mr. WADSWORTH. Four years from the date of payment of the tax.

Mr. SHORTRIDGE. From the payment of the tax?

Mr. WALSH of Montana. Yes.

Mr. KING. Pardon me—I think in the State of California it is one year.

Mr. SHORTRIDGE. I am referring to the Federal tax, and that is what this amendment applies to. I have not the statute before me.

Mr. WALSH of Montana. Mr. President, I just wanted to know from the Senator whether the principle he now invokes has ever found expression in the statutes of the State of California or any other State that the Senator knows of?

Mr. SHORTRIDGE. I do not know that it has, in just that form.

Mr. WALSH of Montana. In any form? Does the Senator know of any such statute of limitations anywhere in reference to anything—that the statute of limitations will commence to run from the time of the decision by an appellate court of the legal principle upon which the rights of the parties depend?

Mr. SHORTRIDGE. Very frankly I answer that I recall no such statute, but I say this with regard to this immediate case: The Federal statute now, as I recall, is four years "after payment"; I remember the story of the great judge who said he would be ashamed to answer a question touching the statute law without looking at the statute, and he would be ashamed if he could not answer a question as to the common law offhand; but as to the statute, of course, I think it is four years.

Here is the situation, however: A statute of limitations, as my brother Senators who are lawyers know so well, has been called a statute of repose, and in many features it is a wise statute; but the statute of limitations when set up as a bar may be looked upon favorably or not. Much has been said on that subject. I have a bill pending which will soon be reported, our Committee on the Judiciary having approved it, and the report will be upon the desks of Senators to-morrow, providing that certain defendants may not interpose the statute of limitations in certain cases. The right to plead the statute of limitations is not a vested right. The pleading of a statute of limitations does not wipe out the debt or the obligation. The debt remains unpaid, the obligation exists, but for reasons known to many it is deemed wise, in some cases just, to plead a statute of limitations as a bar to an action or proceeding to the end that there may be rest and repose from litigation or controversy.

In this case, however, which comes home immediately to many men and women in California, they were obliged to pay certain Federal inheritance taxes under an erroneous interpretation of the Federal statute, and they paid them, it may be, under protest; but the letter of the Federal statute limits the time of commencing an action to recover to four years.

The taxpayer in California raised the question. The district court held in his favor. The appellate court held in his favor, affirming the decision. The Government, properly enough, sought the writ of certiorari from the Supreme Court, which court denied the writ. Nevertheless, the Government was not yet satisfied, and made the unusual motion to which I have referred, namely, a motion to revoke and annul the order denying the application for the writ of certiorari, awaiting, as they said, another decision in a case then pending in the Supreme Court of California.

In due time—and it takes time—the Supreme Court of California handed down its decision; and then, in the carrying out of his expressed intention, Mr. Beck appeared here in the Supreme Court and, by permission, withdrew his motion, and thereupon, if not before, the decision became a finality.

What follows? In the meantime a great many women, widows, in California had been required to pay this illegally levied Federal inheritance tax, and the statute of limitations has run against their recovery.

Mr. WALSH of Montana. Exactly; but the Senator knows that they might easily have instituted a suit at any time to recover it, and let the suit stand until the decision of the other case was made.

Let me ask the Senator this question: The Supreme Court of California have a very high standing. They have repeatedly decided matters, legal principles, a certain way, and rights have accrued, and business transactions have been adjusted in relation to the principles thus laid down; and in years afterwards—10, 15, or 20 years afterwards—they have reversed that decision, said they were wrong about it, and declared an entirely different principle. Does the Senator think it would be wise to have a statute in the State of California that a business transaction that took place 20 years before should be revived by reason of the fact that the supreme court decided, away later, differently from what they thought the law was?

Mr. SHORTRIDGE. No; I answer the Senator immediately, having in mind the rule of stare decisis which applies to property rights, of course I would not have acquired rights disturbed; but a statute of limitations——

Mr. WALSH of Montana. Pardon me. Stare decisis has nothing to do with it. I do not take the case that was actually adjudicated. Of course, that is ended; but I take the case of some other people who did not adjudicate their cases at all, but transacted their business in reliance upon this decision; but finally the Supreme Court say that decision was wrong, and they reverse it. Would the Senator give a right of action to these people?

Mr. SHORTRIDGE. Why, certainly not; because that does involve the doctrine of stare decisis.

Mr. WALSH of Montana. But the Supreme Court, in the case that I cite, disregard the rule of stare decisis and reverse themselves.

Mr. SHORTRIDGE. Certainly; but I would not disturb property rights—certainly not. Here, however, we are concerned only with the naked question of the statute of limitations; and what I am contending for, if I may supplement what has been said by the Senator from New York, is this: Where our Government, which is a just Government, and does not wish to extort illegally from the citizens, has erroneously—note, erroneously—interpreted a statute, and the result of that has been that many men and many women have been obliged to pay to the Government moneys, within a reasonable time thereafter our Government ought to be willing to allow or permit the citizen to come forward, and, if what he alleges be true, namely, that he has been obliged under a wrong interpretation to pay the Government money, to recover that amount.

Mr. WALSH of Montana. But let me say to the Senator that no Government, either Federal or State, wants to exact of any citizen a dollar in the way of taxes to which the State or the Government is not entitled.

Mr. SHORTRIDGE. Certainly; that is true.

Mr. WALSH of Montana. But, in the interest of the public revenues, it has always been held that a very brief statute of limitations ought to apply to an action to recover taxes that are paid, because the Government does not want to be embarrassed by claims that are asserted against the revenues some 2, 3, 4, or 10 years after these claims have been paid; and so, as a rule, a very limited statute of limitations applies to such matters. One year, two years, three years is the usual statute.

We have gone beyond that. We have passed a four-year statute. I undertake to say that the four years is quite beyond the usual length of time that the statute of limitations runs in the ordinary case. Here is a man who has been obliged to pay something by reason of an erroneous demand of the Government upon him for his tax, but he lets the statute of limitations run; he does not start his action for one, two, three, or four years, as the case may be, and he is shut out.

Mr. SHORTRIDGE. Those are thoughtful remarks, and, generally speaking, I think they express a sound doctrine, but in this particular case of the erroneous interpretation of a statute the delay can not be imputed to the taxpayer.

The taxpayer brought the action. The appeals came on and caused this delay, until the final decision of the Supreme Court, which was held up, so to speak, by virtue of this motion to set aside and annul the order denying the petition or application for the writ of certiorari. But even then, after final decision, it took me weeks and months, interviews, arguments, written letters to the Secretary of the Treasury to secure a correct ruling from the Department of Justice.

Mr. WALSH of Montana. But meanwhile these other people could institute their actions.

Mr. SHORTRIDGE. On the contrary, the time had run, even as of the final decision of the Supreme Court, and there was no relief. If I may indulge in a few more words as to the justice of the matter: As we all know, the statute of limitations is a statute of repose. It is to the end that controversies may be regarded as sleeping and dead; if a man has a claim against another, he must assert it within a reasonable time.

There is much to be said in favor of that. Some courts, as Senators will remember, looked with disfavor on statutes of limitations. I think it will be found that latterly courts

have looked rather favorably upon statutes of limitations. But whichever be the proper view, when I am thinking of the Government of the United States, and I find that the Government has erroneously collected money from the citizen, and that the delay in the recovery has been caused by the act of the Government in prosecuting long appeals, then it seems to me we should as a matter of justice give the citizen some time within which to assert his rights after the final decision of a test case.

In this case of California the fact is that many men and many women were erroneously assessed, erroneously taxed, and were, under the law, required to pay moneys to the Government to which the Government, under the law, properly interpreted, was not entitled.

I see no harm coming from this proposed amendment, if I may address myself immediately to the Senator from Montana. I see no injustice coming to the Government, or to anybody. If I did, I would not have said what I have said.

Mr. WALSH of Montana. Let me put a case to the Senator. Here is a man who to-day pays a tax exacted of him by the Government upon a certain interpretation of law. Twenty years from now some one challenges that construction of the law, and it runs its course in the courts for two, three, four, or five years, and is finally decided against the interpretation of the law under which the man paid his tax, and 25 years from the time he paid the tax he may start a suit against the Government and recover.

Mr. SHORTRIDGE. I would not say that. The statute gives a period of four years.

Mr. WALSH of Montana. Exactly; four years after the decision.

Mr. SHORTRIDGE. Yes. I say as a lawyer, if I may count myself such——

Mr. WALSH of Montana. I am putting the case of a man who 20 years before paid his tax, and the interpretation of the law is changed 20 years after that. He has 20 years, and he has 4 years, 24 years from the time he paid the tax, within which to start his suit.

Mr. SHORTRIDGE. If within that whole period he could not get a decision, my answer is that he should have a reasonable time after decision.

Mr. WALSH of Montana. But he could get a decision by starting a suit.

Mr. SHORTRIDGE. I grant you that a principle may be tested by extreme cases, but here let us look to the concrete case. I am looking at this concrete case as it affects the taxpayers of California, and I submit to the learning of the Senator that under the interpretation of this law the citizens of California, husband and wife, owning what we term "community property," were not permitted to file separate returns. Second, when the marriage was terminated by death the surviving wife was compelled to pay a Federal inheritance tax.

Mr. WALSH of Montana. I think I understand the Senator.

Mr. SHORTRIDGE. She was obliged to pay a tax. There has never been any way for relief until the Supreme Court has here within the last year decided this case.

Mr. WALSH of Montana. But how can the Senator say that? These other people had a perfect right to start their suit, just the same as this party did.

Mr. SHORTRIDGE. I grant you that this particular case was started speedily. They sought to speed the case forward, and there was no undue delay. The delay could not be imputed to the taxpayer. The delay occasioned was for reasons I have stated. There was no fault to be found, but the fact is that not until the Supreme Court of the United States rendered its decision was there any possibility of relief, and, as I have stated, even then it became necessary for me to interview the Commissioner of Internal Revenue, the Secretary of the Treasury, the President of the United States, the Attorney General; and finally we have an interpretation here now in harmony with that decision and the law.

Mr. WALSH of Montana. If the Senator will pardon me, that was the Blum case?

Mr. SHORTRIDGE. It was.

Mr. WALSH of Montana. Here is the Jones case. Why did not Jones start his suit? What stopped him from starting his suit? Why did he have to wait until the decision was rendered?

Mr. SHORTRIDGE. The rights of citizens are determined by the decision in this case, and the matter before us now, a proposed statute of limitations. I apologize if I have enlarged this discussion, but I perceived that it affected the very question in which I have been interested and am interested; hence these many words.

I do not recall whether the Senator from Montana was on the subcommittee which considered the bill I introduced, but I did introduce a bill which, among other things, provides that in certain contemplated cases, certain prospective defendants, certain foreign corporations, shall not be permitted to plead or interpose the statute of limitations. The report, which will be on our desks, refers to a few of the many cases in inferior and supreme courts holding that the privilege to plead the statute of limitations is not a vested right, and that it is perfectly competent for Congress to deny that privilege to a litigant.

Why do I say that? Because where a debt is due, where a demand is just, and particularly where our Government has taken from the citizen moneys to which the Government was not under its own laws entitled, the citizen ought to have a reasonable time—I do not say 20 years, but a reasonable time—within which to apply to the courts for relief; and as I understand this amendment, it merely means that the citizen shall have four years after a final decision in respect of an erroneous interpretation of the law, under which erroneous interpretation of the law the citizen was obliged to pay.

I submit that it is just, that it is right, and that it is not charged with any danger of loss to the Government.

The PRESIDING OFFICER. The question is upon agreeing to the amendment proposed by the Senator from New York.

On a division, the amendment was rejected.

Mr. SHORTRIDGE. I reserve the right to have a vote on this amendment when the bill reaches the Senate.

Mr. WILLIS. Mr. President, a little while ago the Senate adopted an amendment on page 233, and I want to call the attention of the Senator from Utah to the fact that another amendment ought to be adopted on page 275 to agree with the amendment already adopted by the Senate.

Mr. SMOOT. That is correct.

The PRESIDING OFFICER (Mr. LADD in the chair). The Secretary will state the amendment.

The READING CLERK. On page 275, after line 17, it is moved to insert a new paragraph to read as follows:

Subdivision 12 of Schedule A of Title XI (being the stamp tax on playing cards).

The amendment was agreed to.

Mr. HARRISON. Has not the Senator from Utah two amendments to offer?

Mr. SMOOT. On page 50, after the word "corporation," in line 23, I move to insert the words "or trust."

The amendment was agreed to.

Mr. SMOOT. On page 65, line 8, after the word "animals," I move to strike out the semicolon and to insert the words "or public cemetery not operated for profit," and a semicolon.

The amendment was agreed to.

Mr. WALSH of Massachusetts. Mr. President, I ask unanimous consent that wherever the word "estate" appears in the features of the bill under Title III the Secretary be instructed to change it to the word "inheritance." Last night we adopted the inheritance provision by my amendment in place of the estate tax, which necessitates the change which I have suggested.

The PRESIDING OFFICER. Without objection, those changes will be made.

Mr. WALSH of Massachusetts. Are we to proceed with the consideration of amendments?

Mr. SMOOT. I would like very much to have the Senate do so.

Mr. WALSH of Massachusetts. On page 195, in the section of the bill imposing excise taxes, I move to amend by striking out in line 19 all after the word "tubes" down to and including the numeral "(2)" in line 20, the words proposed to be stricken out being "parts, or accessories for any of the articles enumerated in subdivision (1) or (2)."

Mr. KING. That would result in the loss of $21,000,000, would it not?

Mr. SMOOT. Yes; $21,000,000.

Mr. WALSH of Massachusetts. I beg the Senator's pardon. Do not jump so quickly. I am not asking for the removal of the tax on all the commodities named in the section.

Mr. SMOOT. That provision has already been agreed to, but I think the Senator reserved the right to offer the amendment in the Senate.

Mr. WALSH of Massachusetts. Yes.

Mr. SMOOT. Then I ask unanimous consent that the vote by which the amendment on page 195, beginning with line 19 and ending with line 25, be reconsidered.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALSH of Massachusetts. I appreciate the courtesy of the Senator from Utah.

Mr. President, the continuance of any of the war nuisance taxes is unwise. These taxes were levied under pressure of the war when increased revenue was needed and it was deemed unwise to place greater tax burdens upon those industries producing the absolute necessaries of life. They are undeniably discriminatory because they fall only upon certain industries, but they were resorted to in an emergency when additional general tax levies would have resulted in increasing the cost of living at a time when the people's board bill had reached the high-water mark.

Now that we are engaged in making already long-delayed tax reductions, should we not begin by repealing the discriminatory taxes on those industries that were singled out to pay special taxes over and above all general levies? It seems to me that by any criterion of fair play we should proceed first to balance the ledger by repealing the excise or luxury taxes, and then make such general reductions as the condition of the public finances will permit.

Representatives of the several industries that have been paying war excise taxes have appeared before committees of Congress again and again pleading for relief. They have tried to explain to us the numerous inequalities resulting from the operation of these taxes, and I think they have shown beyond question that they are placed at a particular and well defined disadvantage in competing with industries which are not burdened by a special tax.

In many cases it has been shown that there is such a similarity between the products of two separate industries that it is difficult to tell where one leaves off and where the other begins. Yet one is specially taxed and the other is not. So great is the similarity of the products that it would be practically impossible to differentiate in the collection of the tax if it were not for the fact that it is collected at the source. For instance, in the collection of the tax on candy, it would be impossible to differentiate between some products of a candy factory and some products of a bakery if the manufacturers were not required to account for their output, upon which calculation the tax is levied. So similar are some of these products that they can not readily be distinguished upon the shelves of the retail establishment. Can anyone deny that there is keen competition between such industries? Yet the products of one are taxed as luxuries and the products of the other are not so taxed.

Take for further illustration the jewelry industry, which is paying a 5 per cent tax on every sale from a dime watch charm to a Tiffany array. This industry is dependent upon the excess earnings of our people. It must get its share of all earnings in excess of what is diverted for the necessary expenses of living. Therefore, it must compete with a thousand and one industries putting upon the market novelties and articles of all kinds more ornamental than useful which are not specially taxed.

In the case of each commodity we find a similar situation, all of which goes to prove the contention that these special luxury taxes are unfair and unjustifiable. How can Congress arbitrarily say we refuse to repeal the tax on this or that commodity, but we will repeal or reduce certain other excise taxes? Do not all of these special luxury taxes stand on the same footing? If they are wrong in principal, as any student of economics will state that they are, then should we not proceed at once to cross them off our statute books?

Mr. President, at the present time there is a tax upon pleasure automobiles of 5 per cent. The provision of the pending bill retained that tax of 5 per cent. Under the present law there is a tax of 3 per cent on automobile trucks or commercial motor vehicles. The text of the House bill and the amendment presented by the Senate Finance Committee makes one modification in the present law in so far as it relates to automobile trucks. It provides that there shall be an exemption from the tax upon automobile trucks, of chassis sold for less than $1,000 and of automobile bodies sold for less than $200. The tax upon automobile trucks and bodies, where the chassis is sold for more than $1,000 or the body for more than $200, is 3 per cent, the modification to the present law being the exception that I have referred to.

In addition to that, under the present law there is a tax upon tires and inner tubes, parts, and accessories. That tax under the present law is 5 per cent. After a spirited debate the House reduced the tax to 2½ per cent, and the Senate Finance Committee has reported an amendment changing the language, but fixing the rate at 2½ per cent, as agreed to in the House. If I had my way and could see some way of raising the necessary revenue, I should like to remove all the tax levied upon automobiles, but such an idea is opposed largely because it has been a fruitful source of revenue. Under the tax upon pleasure automobiles, so called, the revenue amounted in the last year to about $90,000,000. The tax upon automobile trucks yielded about $10,000,000. The tax upon tubes, tires, parts, and accessories brought about $40,000,000.

Mr. SMOOT. Forty-two million dollars.

Mr. WALSH of Massachusetts. I thank the Senator. The reduction of the tax upon tubes, tires, parts, and accessories from 5 to 2½ per cent will reduce the revenues about $21,000,000.

I do not know whether Senators appreciate just to what extent we have been taxing the automobile. I doubt if we appreciate that the farmer who buys a Ford automobile at $500 must pay a tax of $25. I do not think we realize that the farmer who buys a truck where the chassis is sold for $1,000 but the body of the truck is sold for $400 or $500 must pay a tax of 3 per cent upon that body. I think that we might well have found some way to remove this burdensome tax imposed during the war upon automobiles and trucks that were not excessively high priced. Upon the automobile that is necessary to-day for the business man, for the farmer, for the professional man, we ought not to impose this heavy tax. In fact, one of the objections to this revenue bill is that we have not found a way to eliminate the nuisance taxes that were imposed during the war to raise revenue for war purposes.

Now, upon what have we reduced the taxes? I am going to read a list of the nuisance taxes that have been very properly abolished or removed by the House and by the Senate Finance Committee. They include the tax upon telephone and telegraph messages, the tax upon candy and soft drinks, the tax upon admissions to theaters where the admission is less than 50 cents, the tax upon hunting boots, the tax upon yachts and motor boats, the tax upon hunting and shooting garments, the tax upon livery and livery boots, and the tax upon brass knuckles.

We have removed the tax upon all of those articles, some of which are considered to be luxuries, and we have retained the tax upon the automobile of the clerks, salaried men, and the truck of the farmer. We have retained the tax on the parts sold by the garage and auto-supply dealer to the owner.

Mr. DIAL. Mr. President——

Mr. WALSH of Massachusetts. I yield to the Senator from South Carolina.

Mr. DIAL. While we were taking the tax off of yachts, livery boots, and brass knucks, would it not have been well to leave the tax off of the poor fellow who has to borrow a little money at the bank and put a stamp on his note? There is no luxury about that. That is a necessity.

Mr. WALSH of Massachusetts. The Senator refers to the tax upon promissory notes?

Mr. DIAL. Yes.

Mr. WALSH of Massachusetts. I personally feel that the majority made a mistake in not finding, first of all, some way to eliminate the nuisance taxes. It would have been better to remove the nuisance taxes and then make as much of a reduction as possible in the income taxes.

Mr. DIAL. I agree with the Senator entirely. In my State we have to put a stamp on notes under the State law, so it is a double nuisance. I should like to move to reconsider the action of the Senate by which that provision was agreed to, or move that it be stricken out entirely. I hope the Senator will be considering that plan. We only raise $2,150,000 by it anyway, and there is no institution in the world that does so much accommodating work as the small bank in a country town. Of course the tax is passed on to the poor borrower anyway. I hope we can find some means of eliminating it.

Mr. WALSH of Massachusetts. Whatever may be said in favor of the tax upon pleasure automobiles and commercial motor vehicles, I do not believe that any sound argument can be made in favor of retaining a tax upon tires, tubes, parts, and accessories to automobiles. I can understand how in desperation the Government may insist upon retaining its tax upon pleasure automobiles and perhaps upon commercial vehicles, but how it can justify a tax upon tires and tubes and parts is beyond my comprehension. Every owner of automobiles and trucks and every garage in the land protests this tax. Why do you not put taxes on the parts of watches, clocks, pianos, wagons, and other vehicles. You might just as well put a tax on wagon wheels, rims, and wagon springs.

It is estimated at $21,000,000 would be raised by this paragraph as reported by the committee. How would that sum be raised? I call the attention of the junior Senator from Utah [Mr. KING] to the situation. It would be raised largely through the tax upon tires and tubes. I have not asked to

strike that out. I ought to move to strike out the whole paragraph, for it is an unfair tax.

Mr. KING. Mr. President, will the Senator yield?

Mr. WALSH of Massachusetts. Certainly.

Mr. KING. In every argument that may be made by my able friend in favor of the removal of the excise taxes I heartily concur. May I say to the Senator that early in the session I offered a bill to strike out not only the provisions in the law to which the Senator is now referring but substantially all the excise taxes and stamp taxes. I should be very glad if that could be done.

Mr. WALSH of Massachusetts. I appreciate that the Senator feels, as a member of the committee, as I feel—that the majority have a right to outline the general scheme of raising the necessary revenue and that we ought only to protest against those particular items that seem to us to be very unfair and to work an injustice.

Mr. KING. I think I would even go a little further than that. While I am partisan at times, I feel that where we are addressing ourselves to a question as broad as the question of taxation there ought not to be so much partisanship. The question is how we can raise sufficient revenue to run the Government when it is run in an efficient and economic way and upon what object or subject shall we place the burden of taxation.

Upon what objects or subjects shall we place the burden of taxation? We should levy taxes upon those who are best able to pay them. Obviously, when we have to raise $4,000,000,000 or more—and we are going to have a deficit under this bill of at least from two hundred to four hundred million dollars—we have to press down the burden of taxation upon some subjects which we do not wish to tax. I offered an amendment proposing to take off the taxes from telephone messages and telegrams, and yet when I found that the tax raised more than $34,000,000 and that we were striking off taxes from many other articles and that there was going to be a large deficit, I felt constrained to vote against my own amendment.

Mr. WALSH of Massachusetts. I agree in part with what the Senator has said in so far as it applies to automobiles; but what can he say to a duplicate tax? It may be all right under present revenue conditions to put a tax upon a man when he buys his automobile or his truck; but when he goes back to buy tires and to buy tubes and to buy parts and to buy accessories—whatever that may mean—we are imposing upon him a duplicate tax, a nuisance tax, and a misfortune tax. Whenever the automobile owner has the misfortune to have an accident, and has to buy any parts whatever for his machine in order to repair it, he is met with a tax.

Is it a light tax? A tax upon a complete set of tires is estimated to amount to from $2.50 to $20. That is a pretty severe tax. If a man wants to buy four tires for his machine, he has to pay as high a tax, possibly, as $20.

I have not asked that the tax upon tires and tubes be removed, but I do ask that the tax be removed upon parts and accessories. What are parts? A spring, a light, a gauge, a spark plug, a motor, a radiator. Anyone who has the misfortune to have to repair his machine, upon which he has paid a tax, must pay another tax.

Mr. BAYARD. Mr. President——

Mr. WALSH of Massachusetts. I yield to the Senator from Delaware.

Mr. BAYARD. May I suggest to the Senator this thought? By reason of this tax the farmer in his penury is compelled to wear these parts to the uttermost limit, with the result that he himself and his family are continually in grave danger of life and limb because he can not afford to renew the parts of his machine, largely on account of this tax.

Mr. WALSH of Massachusetts. I thank the Senator for his suggestion. He is quite right about the matter, too.

Who pays this tax? The tax upon automobiles and upon parts is paid by the manufacturer in the first instance, but it is passed on to the assembly man, and the assembly man passes it on to the purchaser. When, however, we come to tires, tubes, and parts and accessories, the manufacturer pays the tax originally, but the jobber or the retailer has to pay that tax added to the price of his tubes and his tires and his parts, and the customer beyond him has to pay it, too, when it has been pyramided. It is absurd, it seems to me, to continue in this bill a provision for a tax upon parts and accessories. First of all it is a nuisance to the Government to administer and collect it. What is a part? What is an accessory? Just imagine levying taxes upon spark plugs, upon the clock that is attached to an automobile, upon the radiator, upon the speedometer and the springs, upon any part that it is necessary to have for the repair of a machine that may have broken down.

I have not had a chance to talk with the Senator from Utah about this matter, but I hope that he feels about it as I do. The experts in the Treasury consider that the important part of the tax in this provision is that on tires and tubes. The $21,000,000 that the Treasury will get will come largely from the tax on tires and tubes. I am constrained reluctantly to agree that that tax shall remain in the bill, for I think it ought to go out; but I do insist that the tax on the parts that a man has to buy when his machine is out of order and broken down and the tax on accessories, so called, should be removed from the bill.

I am also informed that the amount of revenue which will be raised from parts and accessories will be very limited, that it will be only a very small portion of the $21,000,000, and that an exemption from the tax will save the automobile trade a great deal of expense and trouble and will certainly be of benefit to those who have to purchase the small parts which are used in repairing automobiles.

Mr. KING. Mr. President, may I ask the Senator from Massachusetts a question?

Mr. WALSH of Massachusetts. Yes.

Mr. KING. I desire to see if I understand what would be the effect of the Senator's amendment, if adopted. Is the amendment on line 14, page 195?

Mr. WALSH of Massachusetts. No; it is on line 19, page 195, where I have moved to strike out the words—

parts or accessories for any of the articles enumerated in subdivision (1) or (2).

Mr. KING. I thought the Senator's amendment related to subdivision (2).

Mr. WALSH of Massachusetts. No.

Mr. KING. If it did, then the words "parts and accessories" refer to those that were a part of the machine itself at the time of the original purchase or original sale.

Mr. WALSH of Massachusetts. It might be interesting in this connection for me to show that there is not any industry in the country paying higher taxes than the automobile industry, and I am sure the Senator from Michigan is well aware of that fact. The 15,000,000 automobiles and trucks pay in taxes of various kinds—Federal, State, city, county, and municipal—approximately $1,250,000,000. It is the most highly taxed commodity which is used by human beings. We have even gone so far as to put this nuisance tax upon the parts and accessories which are used in repairing trucks and automobiles.

If the Senator from Utah will agree to accept the amendment eliminating the tax on parts and accessories, I will not press my amendment to strike out the tax on tubes and tires.

Mr. SMOOT. I wish that I could accept the amendment, but we have got to raise some revenue, and I know of no place where it can be raised better and the tax is imposed on those who can best afford to pay it. I shall want a vote on the amendment.

Mr. WALSH of Massachusetts. Does the Senator understand the purport of my amendment?

Mr. SMOOT. Yes.

Mr. WALSH of Massachusetts. Does he understand that I am only seeking to remove the tax on parts and accessories?

Mr. SMOOT. Yes.

Mr. WALSH of Massachusetts. And allowing the tax on tubes and tires to stay in the bill?

Mr. SMOOT. I am perfectly willing to let them all go out, if the Senator desires to destroy the bill entirely. If there is no desire to raise revenue, let them go out hide, hair, and everything at once.

Mr. WALSH of Massachusetts. I hope the Senator will not get discouraged.

Mr. SMOOT. I am not discouraged; I am merely telling the Senator what is happening.

Mr. WALSH of Massachusetts. There are some things left in the Senator's bill. Much that has gone out was discriminatory and not in the general public interest.

Mr. SMOOT. There are very few, I will say to the Senator.

Mr. WALSH of Massachusetts. This is a Government by majorities, fortunately. Tax bills can not be made by any group of taxpayers.

Mr. FLETCHER. Mr. President, may I inquire of the Senator how many income-tax payers there are? The number is about 6,000,000, is it not?

Mr. SMOOT. There are not that many now; the number is between 5,000,000 and 6,000,000.

Mr. FLETCHER. There are between five and six million income-tax payers, and there are about 14,000,000 automobiles.

Mr. SMOOT. Fifteen million.

Mr. WALSH of Massachusetts. Does the Senator from Utah agree that the tax imposed by this part of the clause raises comparatively little revenue, the principal revenue being derived from the tax on tires and tubes?

Mr. SMOOT. The greater part of the revenue in this paragraph is from the tax on tires and tubes, but I wish to say to the Senator that there is more profit made in parts and accessories than there is in tires and tubes or any other article about an automobile. Mr. Henry Ford could sell his automobiles at actual cost and then make all the money he ought to make, and more, out of the sale of accessories and parts.

If one should attempt to get a Ford automobile by buying separately the parts that are sold, it would cost him about as much as a Rolls-Royce. There is where Henry Ford makes his money. I should like to accept the amendment of the Senator, but I can not do so.

Mr. WALSH of Massachusetts. Mr. President, we are ready for the question.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Massachusetts. [Putting the question.] By the sound the noes seem to have it.

Mr. WALSH of Massachusetts. I ask for a division.

Mr. SMOOT. Let us have the yeas and nays. Then we will know where the Senate stands. I want a record vote.

Mr. WALSH of Massachusetts. Very well. Let us have the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. LODGE (when his name was called). Announcing the same pair that I announced earlier in the day with the Senator from Alabama [Mr. UNDERWOOD], I vote "nay."

The roll call was concluded.

Mr. SIMMONS (after having voted in the affirmative). I transfer my pair with the junior Senator from Oklahoma [Mr. HARRELD] to the junior Senator from Washington [Mr. DILL] and will let my vote stand.

Mr. ERNST. I transfer my general pair with the senior Senator from Kentucky [Mr. STANLEY] to the senior Senator from West Virginia [Mr. ELKINS] and will vote. I vote "nay."

Mr. JONES of New Mexico (after having voted in the affirmative). I inquire if the Senator from Maine [Mr. FERNALD] has voted?

The PRESIDENT pro tempore. That Senator has not voted.

Mr. JONES of New Mexico. I have a pair with that Senator, which I transfer to the Senator from Rhode Island [Mr. GERRY], and will permit my vote to stand.

The result was announced—yeas 31, nays 44, as follows:

YEAS—31

Ashurst	Harrison	Neely	Simmons
Bayard	Heflin	Overman	Stephens
Broussard	Johnson, Minn.	Pittman	Swanson
Capper	Jones, N. Mex.	Ralston	Trammell
Copeland	Kendrick	Ransdell	Walsh, Mass.
Edge	McKellar	Robinson	Walsh, Mont.
Ferris	McNary	Sheppard	Wheeler
Harris	Mayfield	Shields	

NAYS—44

Adams	Ernst	King	Reed, Pa.
Ball	Fess	Ladd	Shipstead
Brandegee	Fletcher	Lodge	Smith
Brookhart	Frazier	McKinley	Smoot
Bursum	George	McLean	Spencer
Cameron	Glass	Moses	Stanfield
Caraway	Gooding	Norris	Sterling
Colt	Hale	Oddie	Wadsworth
Cummins	Howell	Pepper	Warren
Curtis	Jones, Wash.	Phipps	Watson
Dale	Keyes	Reed, Mo.	Willis

NOT VOTING—21

Borah	Elkins	La Follette	Stanley
Bruce	Fernald	Lenroot	Underwood
Couzens	Gerry	McCormick	Weller
Dial	Greene	Norbeck	
Dill	Harreld	Owen	
Edwards	Johnson, Calif.	Shortridge	

So the amendment of Mr. WALSH of Massachusetts was rejected.

Mr. SMOOT. Mr. President, I submit the unanimous-consent agreement which I send to the desk and ask to have stated.

The PRESIDENT pro tempore. The Senator from Utah presents a request for unanimous consent, which will be stated.

The reading clerk read as follows:

It is agreed by unanimous consent that on the calendar day of May 9, 1924, after the hour of 3 o'clock p. m. on said calendar day, no Senator shall speak more than once or longer than five minutes upon the bill (H. R. 6715) to reduce and equalize taxation, to provide revenue, and for other purposes, or more than once or longer than 10 minutes upon any amendment offered thereto up to the hour of 5 o'clock p. m. on said calendar day, and thereafter the Senate will proceed to vote upon all amendments pending, amendments that may be offered, and upon the bill (H. R. 6715) without further debate through the regular parliamentary stages to its final disposition. And, further, that upon the convening of the Senate on Saturday, May 10, 1924, the Senate will proceed to the consideration of the President's veto on S. 5, a bill granting pensions, etc.

The PRESIDENT pro tempore. Is there objection to the request?

Mr. KING. Mr. President, may I ask my colleague why he attaches to the proposed agreement the provision in regard to the pension bill?

Mr. SMOOT. I think the Senate desires to take up that bill immediately upon the passage of this bill, at least; and I will say further to my colleague that I agreed to-day that as far as I was concerned the bill could be taken up to-morrow. This agreement puts it off until Saturday.

Mr. WADSWORTH. Mr. President, the portion of the proposed unanimous-consent agreement which has to do with the consideration of the veto message is the part that particularly interests me, on account of the fact that not only is the appropriation bill for the support of the State Department and the Commerce Department still pending here, but also the War Department appropriation bill. It is on the calendar, and has been there for three weeks. I should prefer, if it is agreeable to the Senator from Washington [Mr. JONES] and to the Senator from Utah [Mr. SMOOT], that the Senate proceed to the consideration of either one of those appropriation bills, with the understanding that if we once get either of them before the Senate as the unfinished business we can temporarily lay it aside for the consideration of the veto message.

Mr. SMOOT. I want to say to the Senator that as far as I am concerned I am against the bill that is the subject of the veto message, but I will vote to take it up immediately after the passage of this bill. I think it is a privileged question, and I think we ought to dispose of it; and if this unanimous-consent agreement is made now I want to say that no matter whether I intend to vote against the bill or not, which I intend to do, I shall vote to take it up if the question is presented after this bill is passed, and I shall vote against taking it up before the bill is passed.

Mr. WADSWORTH. Mr. President, may I ask another question of the Senator? Assuming that we finish the consideration of the revenue bill before the dinner hour or the supper hour to-morrow evening——

Mr. SMOOT. We can not do that.

Mr. WADSWORTH. Is the Senator certain?

Mr. SMOOT. I am quite sure.

Mr. WADSWORTH. The Senator proposes a limitation on debate, beginning at 3 o'clock to-morrow, does he not?

Mr. SMOOT. Yes.

Mr. McKELLAR. Five o'clock.

Mr. SMOOT. The limitation begins at 3 o'clock.

Mr. ASHURST. Mr. President, to settle the matter, I object.

Mr. SIMMONS. I hope the Senator from Arizona will not do that.

Mr. ASHURST. I do not know what it was, but I wanted to make the Senators speak a little louder.

Mr. ROBINSON. Mr. President, a number of Senators on both sides of the Chamber have engagements which contemplate that they shall leave the city. This arrangement is agreeable to most of us on this side, and I hope it may be entered into. It affords, apparently, ample opportunity for debate upon important amendments that may hereafter be presented, and it gives assurance that a final vote on the revenue bill may be had to-morrow. If this arrangement is not entered into, it is exceedingly difficult to anticipate when a final vote may be reached, and it will be very inconvenient to a number of Senators on both sides of the Chamber. If the arrangement is effected, a final vote will be had, as I have already stated, on to-morrow; all debate will terminate at 5 o'clock, and the conclusion of the subject may be reached within an hour or two after that time.

Mr. SIMMONS. Mr. President, I want to add to what the Senator from Arkansas has said——

The PRESIDENT pro tempore. The Chair desires to suggest that he is of the opinion that this unanimous-consent proposal can not be submitted without a roll call.

SEVERAL SENATORS. We have just had one.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. SMOOT. Certainly.

Mr. NORRIS. I want to suggest, as I have done before, that a unanimous-consent agreement, especially on a bill of this importance, that at a certain time the debate shall entirely cease and we shall vote on everything that may be offered without debate is, to say the least, a very loose and very slipshod way of legislating, and unsatisfactory to everybody, because we have found from experience that at that time there may be a dozen amendments offered. No Senator knows the importance of them. He will have to listen to the reading of them and vote on them without explanation, without being able to ask a question about them.

If the Senator would submit a request that commencing right now, as far as I am concerned, the speeches on any amendment suggested should be limited to five minutes, even, I should be glad to agree to that; but we know what has happened in the past. A dozen amendments, on which Senators are compelled to vote without an opportunity even to read them, are offered. We have to listen to the reading of the amendments by the Clerk. The disorder in the Chamber makes it impossible to hear them, often; and if they can not be explained it is not just to a proper amendment, and it is not fair to the Senators who may be compelled to vote unintelligently upon amendments that they ought to have a few minutes, at least, to consider.

Mr. ROBINSON. May I suggest to the Senator from Utah that in all probability the modification which the Senator from Nebraska suggests, if made effective beginning to-morrow, would work out a final conclusion of the bill even before the hour of 5 o'clock.

Mr. NORRIS. I think it would.

Mr. SMOOT. Mr. President, I want to say to the Senator that there is a feeling here that we can not proceed with the voting earlier than some time between 3 and 5 o'clock on the amendments offered with the present limitation, and we may want to vote even before 5 o'clock upon the bill.

Mr. NORRIS. If the Senator would submit the unanimous-consent agreement that I have suggested, that we shall commence to-morrow at the convening of the Senate to limit all speeches to five minutes——

Mr. SMOOT. I can not do that, because the Senator from South Dakota [Mr. NORBECK] wants to offer an amendment, and he is entitled to speak upon the amendment.

Mr. NORRIS. There will be a dozen others who will want to speak on it.

Mr. McKELLAR. I hope the Senator will accept the suggestion of the Senator from Nebraska. I believe we will get through just as quickly as the other way.

Mr. HARRISON. Why can we not proceed and get through to-night?

Mr. SMOOT. It is impossible to do that, unless we stay here all night.

Mr. SWANSON. Let us go on until 10 or 11 o'clock.

Mr. SMOOT. I think it will be all right to take up all the small amendments to-night and dispose of them. Between 3 o'clock and 5 o'clock, as provided in the proposed agreement, these amendments can certainly be taken care of. I hope the Senator from Nebraska, under the conditions, will not object.

Mr. NORRIS. I do not want to prevent anybody from offering an amendment. I may perhaps want to offer a substitute for the entire bill myself.

Mr. SMOOT. The Senator will have four hours in which to do it.

Mr. NORRIS. Perhaps somebody else will take up the four hours; and if I took the four hours, it would not be just to others. We ought to have a day or two of debate on that.

Mr. SWANSON. Is the Senator contemplating an adjournment or recess as soon as the agreement is made?

Mr. SMOOT. If we can make this agreement to-night I think there are a lot of minor amendments which Senators want to offer upon which there is no earthly need for a yea-and-nay vote, which we can dispense of.

Mr. SWANSON. If we have a night session we ought to have a night session. If we are not going to have a night session, there is no use going on until 8 o'clock and adjourning. Everybody breaks his engagements when there is a threat of night sessions. We come here and we do not have them. We run along until 8 or half past 8, and then adjourn. If we are to have night sessions, let us have them, and if we are not, let us adjourn at 6 or 7 o'clock. It seems to me that we could enter into this agreement and proceed under the five-minute rule until 11 o'clock. I have canceled all my engagements to-night to come here for a night session.

Mr. SMOOT. We can go right on with the amendments. I think there will be no record votes, and we can get rid of them in an hour. Does the Senator from Arizona object?

Mr. ASHURST. Mr. President, I was utterly unable to hear what was going on, and in order that I might call attention to some Senators who were standing up, I objected. If I had known what it was I would have objected more strongly than I did. I have no desire to throw a monkey wrench into the machinery, but I was not born yesterday. Over and over again we have seen the Senate considering a bill of vital importance and we have agreed to stop debate at a certain hour. It is after that hour, when debate and all opportunity to explain an amendment has gone, that the vital amendments are proposed.

I wish the bill could be voted on to-night or to-morrow. If the Senator from Utah will modify his request so that it will provide that we shall have a night session to-night, and work until 11 o'clock, and beginning now that all debate on the bill and amendments thereto shall be limited to five minutes, I would be happy, and would not object.

Let us recount the situation. Night after night we are told there is to be a night session. We telephone our houses that we will not be home, and about the time we ought to be there the Senate adjourns. If the Senator from Utah will include in his agreement that we shall work to-night until 11 o'clock and that from this hour all debate on the bill and amendments shall be limited to three or five minutes, I shall have no objection. But I am not going to tie my hands, and be a party to tying the Senate up, so that I am obliged to sit here like a mute automaton and vote upon something I do not know anything about.

The PRESIDENT pro tempore. The Chair understands that objection will be made, and therefore it is unnecessary to call the roll as provided in paragraph 3 of Rule XII.

Mr. NORBECK. Mr. President, I want to state, for the information of the Senate, that I intend to offer to-morrow as an amendment to this revenue bill one of the so-called agricultural relief bills. I feel that this will probably be the only chance in the Senate to discuss agricultural relief at the present session. I have in mind the so-called Haugen-McNary bill.

My attention has been called to the fact that it can not properly be brought up in the Senate as a separate measure, that it will be subject to a point of order because it is a bill for raising revenue, so that the only way to bring it up for consideration will be in connection with another revenue bill, and I have therefore had it printed as an amendment to this bill.

I shall want at least half an hour to speak on the question myself, and I think many other Senators will want to go into that matter quite thoroughly, because to-morrow may be the only chance to seriously consider that bill.

Mr. COPELAND. Mr. President, is it in order now to present an amendment to the bill?

The PRESIDENT pro tempore. The Chair understands that there is no amendment pending.

Mr. COPELAND. I desire to propose an amendment to section 214.

The PRESIDENT pro tempore. The Secretary will report the amendment offered by the Senator from New York.

The READING CLERK. On page 53, after line 2, the Senator from New York proposes to insert the following:

11. To provide for deduction for doctor bills, nurse bills, hospital bills, and drugs prescribed for remedial purposes.

Mr. COPELAND. Mr. President, I observe that section 214 is devoted to deductions allowed individuals, and I find that deductions are permitted for all ordinary and necessary expenses incurred in carrying on any trade or business; for all interest paid; for losses sustained during the taxable year not compensated for by insurance; for losses sustained if arising from fires, storms, shipwreck, or other casualty, or from theft. It seems to me it is just as logical and proper that losses sustained through illness should be made a proper deduction from the tax list.

A young man, perhaps a newspaper man, whose income is four or five thousand dollars a year, may have a sick wife, and through the payment of doctor bills and nurse bills and hospital bills and bills for medicine practically his entire salary may

be taken up. So I feel that it is a proper deduction to make, and I hope the Senate may take a similar view.

Mr. SMOOT. Mr. President, I can not believe that the Senator is really in earnest in this matter. Why not have the deduction for payment of an attorney? Sometimes they are as expensive as a doctor, but not generally.

Mr. COPELAND. That is included.

Mr. SMOOT. Oh, no.

Mr. COPELAND. It says "or other casualty."

Mr. SMOOT. Is that a casualty? I think both of them would be casualties then. It may be true that the doctors of this country have come to the conclusion that they will take out of every man who earns $5,000 the whole of his income; but I do not think we ought to encourage that.

Mr. COPELAND. Mr. President, this has not anything to do with the doctor.

Mr. SMOOT. Oh, no. It will allow the doctor to charge a little more.

Mr. COPELAND. This is to give some relief to the layman, and Heaven knows he needs it.

Mr. SMOOT. He needs it, and he needs help from the doctors, too, I will say to the Senator.

Mr. COPELAND. I can not see how it can possibly benefit the doctor.

Mr. SMOOT. It will only allow the doctor to charge more. The Senator admits they take about all people make, anyhow, and whatever exemption we give, of course, the doctor can charge that much more.

Mr. COPELAND. Mr. President, let me ask the Senator from Utah, why do you on page 49, in subdivision 6, permit a loss sustained from fire, or storm, or shipwreck, or from theft?

Mr. SMOOT. That is a casualty.

Mr. COPELAND. Is not sickness a casualty?

Mr. SMOOT. It is not a casualty in the shape of destruction of property.

Mr. COPELAND. I assume the Senator considers it to be an act of God.

Mr. SMOOT. Property is what we are legislating about.

Mr. COPELAND. The Senator considers it to be an act of Providence?

Mr. SMOOT. No; I think sickness generally comes from the act of the man himself. I do not think God has very much to do with it.

Mr. COPELAND. Does the Senator think He has to do with storms and fire? They might come from man's own carelessness?

Mr. SMOOT. I think He has something to do with storms.

Mr. COPELAND. Mr. President, it would be interesting to continue the discussion—I should like to continue it, if we had more time—but I believe that it will appeal to anyone who has a knowledge of the burden which the doctor bill and the hospital bill and the nurse bill and the drugs bill make upon any family.

Mr. SMOOT. Nobody knows it any better than the Senator from Utah.

The PRESIDENT pro tempore. The question is on agreeing to the amendment offered by the Senator from New York [Mr. COPELAND].

The amendment was rejected.

Mr. McKELLAR. Mr. President, I offer the amendment which I send to the desk.

The PRESIDENT pro tempore. Before that amendment is taken up the Chair desires to state that the vote by which the amendment offered by the Senator from Massachusetts on page 195 was agreed to was reconsidered in order to permit the Senator from Massachusetts to offer an amendment to a certain part of his amendment, and the amendment to the amendment was rejected; and now the question is upon agreeing to the amendment.

The amendment was agreed to.

The PRESIDENT pro tempore. The Secretary will state the amendment offered by the Senator from Tennessee.

The READING CLERK. On page 245, after line 21, the Senator from Tennessee moves to insert:

SEC. —. That whenever there has been an examination of the books and accounts of any taxpayer by a field agent of the Treasury Department and there has been an audit of the taxpayer's returns based on the said field agent's report and approved by the commissioner, and the taxpayer has paid any additional taxes found, or received any refund allowed, the case shall be closed, and can not again be reopened after a period of two years.

Mr. McKELLAR. The provision just preceding, on page 245, reads as follows:

SEC. 1105. No taxpayer shall be subjected to unnecessary examinations or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless the taxpayer requests otherwise or unless the commissioner, after investigation, notifies the taxpayer in writing that an additional inspection is necessary.

All that the amendment which I have offered does is to provide that after an examination by the field accountants, and after there has been an audit and final action is taken, in two years thereafter the matter shall be finally closed.

As the Senator from Virginia [Mr. GLASS], former Secretary of the Treasury, well said to-day, one of the most unpopular attributes, if I may call it that, of any tax measure is the attribute that the taxpayer never knows when he is through. My amendment permits the taxpayer to know that he will have finished in two years after his last settlement, and that is absolutely fair. The taxpayer ought to have that assurance. He ought not to be constantly menaced with opening and reopening of tax matters. Surely two years after final settlement, in which he may be paid a refund or may receive an abatement, or may have to pay an additional tax, is sufficient. All the amendment does is to make it final after two years.

Mr. KING. Mr. President, will the Senator yield?

Mr. McKELLAR. Certainly.

Mr. KING. Is the amendment to be retroactive?

Mr. McKELLAR. Not at all.

Mr. KING. It is to be in futuro?

Mr. McKELLAR. Yes.

Mr. KING. Does it affect cases that are still unsettled; the Senator knows there were something like 5,000 cases in 1917, six or seven times that number in 1918 and increasingly more later, and there have been attempts at settlement; and doubtless the books have been closed in some cases.

Mr. McKELLAR. Only where there has been a final settlement and the taxpayer has been paid a refund or has paid an additional tax and all matters settled between the taxpayer and the Government. I say that two years is long enough for that kind of a settlement to exist, when the Government should be barred.

Mr. SWANSON. Does the Senator make any exceptions for fraudulent cases?

Mr. McKELLAR. There is another provision in the bill taking care of that, or I would be willing to accept that suggestion.

Mr. SWANSON. There should be no limitation upon fraud.

Mr. McKELLAR. No; there ought not to be.

Mr. SMOOT. That is what the Senator's amendment provides.

Mr. McKELLAR. I will add to the bill language to cover that. I ask permission to perfect my amendment by adding the words "except in cases of fraud." Will the Senator from Utah accept the amendment with that modification?

Mr. SMOOT. There is no necessity for the amendment. I will read the provision in the bill covering it.

Mr. McKELLAR. I have read the provision to which the Senator refers, but it does not mean what my amendment means.

Mr. SMOOT. It means all that the Government ought to be called upon to permit.

Mr. McKELLAR. Oh, no; a taxpayer never knows when he gets through. A corporation or individual doing business may have settled his taxes for five years previously, but he does not know when some inspector or accountant for the Government is going to come back to reassess him for taxes five years previously. There ought to be some limitation. It is unfair to the taxpayer as it now stands. It is not provided for in the succeeding section, section 1106, to which the Senator from Utah refers.

Mr. SMOOT. Mr. President, I desire to offer again the unanimous-consent agreement which I send to the desk.

The PRESIDENT pro tempore. The Chair will ask the Senator from Tennessee if he yields for that purpose?

Mr. McKELLAR. Indeed, I do. I am perfectly willing to do anything to expedite an agreement to vote on the bill.

The PRESIDENT pro tempore. The Senator from Utah presents a request for unanimous consent, which will be read.

The reading clerk read as follows:

It is agreed by unanimous consent that on the calendar day of May 9, 1924, after the hour of 3 o'clock p. m. on said calendar day, no Senator shall speak more than once or longer than five minutes upon the bill (H. R. 6715) to reduce and equalize taxation, to provide revenue, and for other purposes, or more than once or longer than 10 minutes upon any amendment offered thereto up to the hour of 5 o'clock p. m. on said calendar day, and thereafter the Senate will proceed to vote upon all amendments pending, amendments that may be

offered, and upon the bill (H. R. 6715) without further debate through the regular parliamentary stages to its final disposition; and, further, that upon the convening of the Senate on Saturday, May 10, 1924, the Senate will proceed to the consideration of the President's veto of Senate bill 5, granting pensions, etc.

The PRESIDENT pro tempore. The Secretary will call the roll to ascertain if a quorum is present.

The reading clerk called the roll, and the following Senators answered to their names:

Adams	Fess	McKellar	Sheppard
Ashurst	Fletcher	McKinley	Shields
Ball	Frazier	McLean	Shipstead
Bayard	George	McNary	Shortridge
Brandegee	Gerry	Mayfield	Simmons
Brookhart	Glass	Moses	Smith
Broussard	Gooding	Neely	Smoot
Bursum	Hale	Norbeck	Spencer
Cameron	Harris	Norris	Stanfield
Capper	Harrison	Oddie	Stephens
Caraway	Heflin	Overman	Swanson
Copeland	Howell	Pepper	Trammell
Cummins	Johnson, Minn.	Phipps	Wadsworth
Curtis	Jones, N. Mex.	Pittman	Walsh, Mass.
Dale	Jones, Wash.	Ralston	Walsh, Mont.
Dial	Keyes	Ransdell	Warren
Edge	King	Reed, Mo.	Watson
Ernst	Ladd	Reed, Pa.	Wheeler
Ferris	Lodge	Robinson	Willis

The PRESIDENT pro tempore. Seventy-six Senators have answered to their names. A quorum is present. The Secretary will read the proposed unanimous-consent agreement, submitted by the Senator from Utah [Mr. SMOOT].

The reading clerk read as follows:

It is agreed by unanimous consent that on the calendar day of May 9, 1924, after the hour of 3 o'clock p. m. on said calendar day, no Senator shall speak more than once nor longer than five minutes upon the bill (H. R. 6715) to reduce and equalize taxation, to provide revenue, and for other purposes, or more than once or longer than 10 minutes upon any amendment offered thereto, up to the hour of 5 o'clock p. m. on said calendar day, and thereafter the Senate will proceed to vote upon all amendments pending and amendments that may be offered and upon the bill (H. R. 6715) without further debate through the regular parliamentary stages to its final disposition; and, further, that upon the convening of the Senate on Saturday, May 10, 1924, the Senate will proceed to the consideration of the President's veto of Senate bill 5, granting pensions, etc.

The PRESIDENT pro tempore. Is there objection to the unanimous-consent agreement?

Mr. NORRIS. The Senator from South Dakota [Mr. NORBECK] may have something to say about it.

Mr. NORBECK. I simply want to serve notice on the Senate that it is to be understood that this is our only chance to pass the McNary-Haugen bill unless it is first passed through the House and comes over here in that way. A point of order would lie against it as an amendment to an appropriation bill; but no point of order will lie against it as an amendment to the pending bill, which is the revenue bill.

Mr. NORRIS. That being true, it would be perfect folly, it seems to me, and it would not be fair to the McNary-Haugen bill to agree to this unanimous-consent request and undertake later to pass that bill, which is as important as the revenue bill itself.

Moreover, I want to say that the minority members of the Committee on Agriculture and Forestry decided and asked me, when the McNary-Haugen bill came up, to offer the so-called Norris-Sinclair bill as a substitute for it. I feel that if we are going to take up the McNary-Haugen bill even as an amendment to the revenue bill, it would be my duty to do that. I realize that that is not the right way to discuss the bill. We ought to have several days of discussion upon it. Everybody concedes that. But not being able to have several days of discussion, it means that any farm legislation will be defeated if we are going to limit debate to speeches of a few minutes.

On the other hand, I realize what the Senator from South Dakota has said, that to get the McNary-Haugen bill up at all he must either wait until it passes the House and comes here, which is the way we ought to do the business, or he must offer it as an amendment to the revenue bill. I am not finding fault with him. He does not want to take it up in that way. He wants to take it up in a regular way. If those who are controlling legislation—not here alone, as it would require action by the House—want to get the measure up in the right way, and we could be assured that the McNary-Haugen bill, for instance, would be acted on in some way by the House, so that it would come up in the regular way here, there would not be any disposition to take the course the Senator from South Dakota is compelled to take.

Mr. REED of Missouri. Mr. President——

Mr. NORRIS. I yield to the Senator from Missouri.

Mr. REED of Missouri. Of course, we can not control the action of the other House.

Mr. NORRIS. I realize that.

Mr. REED of Missouri. Of course the Senator knows that. Now, what is the obstacle in the way of bringing up the McNary-Haugen bill in regular course here? The bill was brought into the Senate some weeks ago, at least a number of days ago, and was by the friends of the measure sent back to the committee. The particular advocates of the bill took that course. They did it for reasons which they thought were good. I understood they themselves wanted to perfect the measure. I have seen no disposition to refuse that bill consideration.

Mr. NORRIS. If the Senator from Missouri had heard what I said, he would have understood my position. I did not offer that as my judgment; I have never considered it with that point in view; but, in my opinion, from what little I thought about it, I do not believe the objection is good. I will say to the Senator from Missouri that the reason the Senator from Oregon [Mr. MCNARY], the author of the bill, has not moved to take it up has been because he has reached the conclusion—and he has done that, I am informed, after talking with a good many of the parliamentarians of the body—that the bill would be subject to a point of order because it contains revenue provisions, and that it would be unconstitutional to consider it here until the House has first considered it. That is the proposition with which the advocates of the bill are face to face.

Mr. FLETCHER. Is it not well known that it is on the program in the House; that it is one of the preferred measures which are to be taken up in that body?

Mr. NORRIS. I do not know.

Mr. FLETCHER. I understand that to be the case.

Mr. NORRIS. I understand it is on the calendar of the House.

Mr. FLETCHER. It is on the program to be taken up in the other House.

Mr. NORRIS. I do not think anybody realizes more fully than do I, and I think everybody else must, that to take the bill up in the way which the Senator from South Dakota proposes to take it up would be unfair to the bill itself, and yet if the friends of the bill have the right idea, and Congress is going to adjourn about the 1st of June, they have reason to believe that on the pending measure would be the only opportunity they will have to take it up.

Mr. REED of Missouri. Mr. President, I know a number of the Senators who earnestly desire to cooperate in any manner that will afford some relief to farmers. I am one of those Senators. I would not think of supporting that bill—I may not support it anyway; I want to study it; but I say my objective is the same objective the Senator from South Dakota has; I should like to do something for the farmer—but I would not vote for that bill added on to the pending bill.

Mr. NORRIS. As I said a few moments ago, in my opinion the McNary-Haugen bill will not get the support of its own friends entirely if it shall be offered as an amendment to the pending bill, because it must be admitted that that is not the right way to legislate.

Mr. REED of Missouri. I have another reason for my position. It is whispered about that the revenue measure we are now considering is likely to be vetoed. It is also whispered about that the McNary-Haugen bill or any similar bill is also likely to be vetoed. Of course, I do not speak for the President; I simply repeat what is common talk. If we add both of these measures together and send them to the White House, I feel perfectly sure both of them will be vetoed, and we should imperil both bills by sending them there at one time. I think it would be the part of unwisdom by those who are in favor of farm legislation to try to attach it as a rider to the pending measure.

Mr. NORRIS. I agree with that proposition. In the first place, I do not believe the bill can be added to the revenue bill because a good many Senators feel as the Senator from Missouri has expressed himself—and there is ample reason for feeling that way—that it would not be the proper way to legislate. Those who want some farm legislation or feel at least that they ought to have an expression and a vote on some permanent farm legislation are worried now because it is pratically given out that Congress is going to adjourn about the 1st of June, and about the time we get through with this bill then will come up the motion to adjourn. I want to say by way of parenthesis that I advised the Senator from South Dakota not to offer this bill as an amendment to the pending measure.

I thought it would be unjust even to the bill which he favors. I do not believe it should be done. Yet it must be conceded

that, under the rules, it is in order to do it if the Senator wants to pursue that course. It must be conceded, too, that if he and the other friends of the measure are right that it would be subject to a point of order if an effort were made to consider it in the Senate before it is acted upon in the other House. Then, unless there can be an understanding that the Senate will not adjourn until some disposition is made of farm legislation, the pending bill affords the only opportunity the Senator from South Dakota will have to get any kind of a hearing on the bill.

Mr. SMOOT. Mr. President, I rise to say to the Senator from Nebraska that I do not believe this Congress is going to adjourn without some kind of relief legislation for the farmer.

Mr. NORRIS. I wish we could have that understanding. If we could I think it would settle the entire matter.

Mr. NORBECK. Mr. President——

Mr. NORRIS. I yield to the Senator from South Dakota.

Mr. NORBECK. Mr. President, I should like to ask the parliamentarians of the Senate who have spent from 10 to 20 years here and are familiar with the practice of the Senate if they can suggest some other way in which we can get a vote on the bill in this body?

Mr. REED of Missouri. May I ask the Senator a question?

Mr. NORBECK. Yes.

Mr. REED of Missouri. The McNary-Haugen bill does not propose to raise revenue in any way, but does propose to appropriate some money?

Mr. NORBECK. The bill carries a tariff feature very much as does any other tariff bill, and I understand that there is a constitutional provision against first taking it up in the Senate except in connection with a revenue bill.

Mr. REED of Missouri. I did not understand that it carried that feature, because the bill has never been laid before the Senate formally.

Mr. NORRIS. I think the bill has been on the calendar for a good while.

Mr. REED of Missouri. I wish to say a word further, if the Senator from Nebraska will pardon me.

Mr. NORRIS. I yield to the Senator.

Mr. REED of Missouri. I am speaking now to the Senator from South Dakota. If the Senator from South Dakota has a sufficient number of votes in the Senate to pass the McNary-Haugen bill he can certainly prevent an adjournment, while if he does not have a sufficient number of votes to pass the bill, then bringing it forward will, of course, not avail much.

Mr. NORBECK. That is a good deal like saying you can lead a horse to water but you can not make him drink.

Mr. REED of Missouri. No; that is not saying that at all. If you have enough votes to pass the bill you can prevent the adjournment of the Senate until it is considered; but if, on the other hand, you do not have enough votes to prevent adjournment you probably would not have enough votes to pass the bill.

Mr. NORBECK. How will the bill get to the Senate in the first instance except it shall pass the House first. How can we get the bill before the Senate at all?

Mr. REED of Missouri. Congress can not adjourn until the Senate agrees to adjourn, and if you have a majority of the Senate in favor of your bill the Senate will refuse to adjourn until the House sends that bill over.

Mr. NORBECK. I recall very distinctly the last days of the last session when Senators here started out to whip the House into line, and most of the leaders on both sides of the Chamber said that was the wrong policy.

Mr. REED of Missouri. I am not speaking about whipping the House into line. It is a mere matter of getting that bill here.

Mr. NORBECK. The House has got to pass it before it can come over here.

Mr. REED of Missouri. That is true.

Mr. NORBECK. If they do not pass it; it can not come here, and how can we vote on it?

Mr. REED of Missouri. But you can hold Congress in session beyond the 1st of June if you have a majority. That is all that I am saying, and that is perfectly plain.

Mr. NORRIS. Of course we have no right to demand of the House that they pass a bill, and we have no right to demand even of the leaders here any agreement that we shall stay in session until we pass the bill. All we do have a right to do if we want to prevent an adjournment is to ask that action be had on it. It may be defeated in the House.

Mr. McNARY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Nebraska yield to the Senator from Oregon?

Mr. NORRIS. Yes.

Mr. McNARY. Mr. President, in answer to the suggestion made by the Senator from Missouri, let me say that the bill contains a tariff provision whereby revenue might be collected and covered into the Treasury of the United States. Consequently, the drafting bureau and others have advised me—and I myself have looked into the matter and given it some consideration—that the first action should be taken by the House in order to conform to the requirements of the Constitution. That is the reason I have not heretofore pushed the consideration of the bill in this body.

I am in accord with the views of the Senator from Nebraska and the Senator from Missouri, namely, that the bill should come up in the ordinary way. I doubt the propriety of trying to tack it on as a rider to the pending bill. I know that riders are not popular; it is not the proper way to legislate.

Mr. NORBECK. Mr. President, will the Senator yield?

Mr. McNARY. Yes.

Mr. NORBECK. I noticed that a great many riders as to various matters were attached to the pending bill this afternoon and not one Senator in the Chamber objected to them, although some of them were very irrelevant riders. Why does it happen that farm legislation should draw all the fire?

Mr. McNARY. I appreciate the zealous interest the Senator from South Dakota has in farm legislation and I admire it very much, but I do not think, Mr. President, that this bill would get nearly so many votes as a rider or as an amendment to the pending bill as it would if it were standing on its own feet. I have not offered it as an amendment for that reason.

The situation is simply this: The House has reported favorably on this bill and it is on their calendar for action; the Senate has acted likewise. I have been informed by those in charge of the bill in the House that within a few days it will come up for consideration in the House. Consequently I was willing to wait until it should come up in the House for consideration and should be passed and should come over here for proper consideration.

The Senator from Nebraska has a bill which also has been reported, but I do not think it would be fair to consider either of these bills without the proper opportunity to discuss them. I can say to my good and distinguished friend from South Dakota that it would be impossible to consider a bill of this importance inside of four or five days. There are many features that must be explained; it is a large and comprehensive measure. I think it gives adequate relief to the farmers who have found themselves in distressed conditions, but to try to put it through under a unanimous-consent agreement such as is proposed here would render it impossible adequately to consider the bill. That is the reason I have not urged it. I shall support the amendment if offered, but I am afraid that if offered the same state of mind that the Senator from Missouri finds himself to possess would obtain generally among the Members of this body, and the bill would not receive the support it would receive if it were considered as an independent measure. For that reason I, as one very much interested in farm-relief legislation, regret that it should be proposed as an amendment to the pending bill.

Mr. WATSON. Mr. President, I want to say for the benefit of the Senator from Nebraska that at a Republican conference held during the present week it was agreed that immediately after the passage of the tax bill agricultural legislation in some form should be permitted to come before the Senate.

Mr. NORRIS. May I interrupt the Senator?

Mr. WATSON. I will yield just as soon as I make this statement. The Senator from Oregon [Mr. McNARY] in charge of the McNary bill, or its author at any rate, stated that was entirely agreeable to him and that he would be willing to permit the appropriations bills to come in from time to time, and that the McNary-Haugen bill might be made the unfinished business.

Mr. McNARY. No; I beg the Senator's pardon.

Mr. WATSON. Or some form of agricultural legislation.

Mr. NORRIS. The Senator is mistaken about that.

Mr. McNARY. Let me correct the Senator on that point.

Mr. WATSON. Wait until I finish my statement.

Mr. McNARY. I said specifically that I would not insist on this bill but on some bill having for its object general farm relief.

Mr. WATSON. Precisely, whether it be this bill or some other bill affording agricultural relief.

Mr. NORRIS. That is what I wanted to call the Senate's attention to. I said some time ago that, unless something was done by the House with the McNary bill, I was going to move to take up the so-called Norris-Sinclair bill here. I think I explained the embarrassment under which I would labor in making that motion. I did not want to be unfair to the Agri-

cultural Committee, that the Agricultural Committee had decided on the McNary-Haugen bill, although they afterwards directed me to report the other bill. The understanding was that the Senator from Oregon would take up the McNary-Haugen bill and that during the course of the debate I would offer the other bill as a substitute, so that they would both be before the Senate at one time.

Mr. ROBINSON. Mr. President——

Mr. NORRIS. I do not want to break that understanding. I do not want to do what would appear to be unfair. I could move to take up the other bill as soon as we get through with this.

Mr. ROBINSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Nebraska yield to the Senator from Arkansas?

Mr. NORRIS. I will yield in just a moment. It is because of the action taken by the Agricultural Committee, giving preference to the other bill, that I would be in an embarrassing position to try to shut it out. I realize, also, that those who want to take up the McNary-Haugen bill are precluded on account of no action having been taken by the House. That is the reason why I feel embarrassed in making the other motion, because I do not want to disregard what the Agricultural Committee decided should be done with these bills.

I now yield to the Senator from Arkansas.

Mr. ROBINSON. Mr. President, the Senate has now consumed approximately three-quarters of an hour in debating the proposed unanimous-consent agreement. That time might very well have been devoted to the consideration of the bill before the Senate. Progress could have been made in connection with it. If the proposed unanimous-consent agreement is to take up the remainder of the session, or a material portion of it, I suggest to the Senator who offered it that it be withdrawn.

The PRESIDENT pro tempore. Is there objection to the unanimous-consent agreement proposed by the Senator from Utah?

Mr. ADAMS. Mr President, I want to make an inquiry with reference to the agreement, and it is this: After the hour of 5 o'clock has been reached, will it then be possible for amendments to be presented which will thereafter be voted upon without having been explained or discussed?

The PRESIDENT pro tempore. That is the understanding of the Chair.

Mr. ADAMS. It seems to me that at least there should be some provision made by which amendments which are to be proposed after the period for discussion is past shall be placed in some way upon the desks or in the hands of Senators, so that they may understand them. I have no disposition for discussion; I think there is very little advantage in most of the discussion; but, for one, I should like to have an opportunity to read the amendments which are being presented without discussion, and it seems to me that such an addition to the unanimous-consent agreement would help some and prevent some of us from being charged with passing ill-considered legislation at a time when we do not hear what is passing.

Mr. SMOOT. I will say to the Senator that I do not think there will be very many amendments offered after that time; but I am perfectly willing to modify the amendment so as to provide for five minutes' discussion of any amendment that may be offered after 5 o'clock.

The PRESIDENT pro tempore. The Chair feels that debate upon the proposed unanimous-consent agreement has proceeded as long, probably, as the rules of the Senate permit.

Mr. JONES of New Mexico. Mr. President, I should like to suggest another unanimous-consent agreement, then, that when we conclude——

The PRESIDENT pro tempore. There can not be two pending at the same time.

Mr. SMOOT. Would it satisfy the Senator to have a requirement that all amendments shall be offered by 4 o'clock? That is an hour before 5 o'clock.

Mr. ADAMS. If they are put in writing, so that they are accessible to the Senators. I am entirely willing myself to take the responsibility for what I can make out of the amendment by applying it to the tax bill before me; but when the amendment is read from the desk, amending line so-and-so, page so-and-so, by inserting this and striking out that, I can not possibly know what it means.

Mr. SMOOT. There will be no amendments offered after 4 o'clock.

Mr. JONES of New Mexico. Mr. President, let me suggest a little change. I realize the force of the suggestions made by the Senator from Colorado and the Senator from Nebraska, and I have said time and again—of course, with my fingers crossed—that I never would consent to a fixed time for voting upon a bill which required a number of amendments without an opportunity to explain the amendments; and while I am not going to object in this case, notwithstanding my predilection, I suggest that when we conclude our business to-night we meet to-morrow morning at 10 o'clock, and that we limit the debate then to the five minutes specified in the unanimous-consent agreement. I feel certain that under that limitation of debate we will be able to pass the bill to-morrow, and that all amendments will be explained.

Mr. DIAL. Mr. President, I do not like a double-barreled agreement. I want to get rid of this tax bill at the earliest possible moment. I shall be glad to agree to a five-minute rule or any other rule that will dispose of it at an early date; but I am going to object, because I can not agree to the second part of the agreement.

The PRESIDENT pro tempore. The Senator from South Carolina objects. The question is upon the amendment offered by the Senator from Tennessee [Mr. McKELLAR].

Mr. SMOOT. Mr. President, I simply want to say to the Senate and also to the Senator from Tennessee that the substance of his amendment is all found in section 1106, which reads as follows——

Mr. WALSH of Montana. What is the page, please?

Mr. SMOOT. Page 245.

If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty or accepted any abatement, credit or refund based on such determination and assessment, and an agreement is made in writing between the taxpayer and the commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive, then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1) the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States; and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.

Mr. McKELLAR. Mr. President, how will that be made effective? After the taxpayer pays the taxes he has to seek out the commissioner and the Secretary and have an agreement that that is going to be finally binding hereafter. How does the Senator propose to carry that out?

Mr. SMOOT. There will be a regular written form delivered to every taxpayer who makes a request for it. The taxpayer makes out the request of the commissioner, and under this amendment, of course, there will be a final determination of his case.

Mr. McKELLAR. There is nothing to indicate that he is to have a form made out or an agreement made.

Mr. SMOOT. There is an authorization for rules and regulations to be made by the department, and I know that those forms are made out, and any taxpayer who wants to make application for them can do so.

Mr. McKELLAR. Is this the present law?

Mr. SMOOT. Yes.

Mr. McKELLAR. Mr. President, we have had innumerable cases where they have opened it up after having settled it. It has been just a short time since one of my constituents came to me and said that about two years ago he had received a refund, and it had been opened up in the meantime, and they were demanding other taxes from him.

Mr. SMOOT. In such a case as that it is entirely the taxpayer's fault.

Mr. McKELLAR. But there ought to be some time when the taxpayer can be free of all past taxes.

Mr. SMOOT. He will be free if he is given this chance, and he is given it under the law, and if he does not avail himself of it we can not help it.

Mr. McKELLAR. There ought to be some time when his estate will not be subject to be mulcted in taxes of several years past.

Mr. McLEAN. All he has to do is to write a letter to the commissioner, have his account audited, and ask for his discharge.

Mr. McKELLAR. All he would have to do would be to pay an additional tax if it should be assessed. He could get rid of it in that way, but it ought not to be that way. They ought not to be deviled all their lives, and that is about what this means.

Mr. WALSH of Montana. Mr. President, I should like to inquire of the Senator from Utah if he conceives that the provision to which he has called our attention meets the case, and whether it is altogether just? In order to get a matter closed, the taxpayer must arrive at an agreement with the commissioner, with the approval of the Secretary. The commissioner

may agree to close up my matter, and he may not agree to close up some one else's matter. Apparently this leaves it entirely in the discretion of the commissioner to consider one case closed and to consider the other case still open.

Mr. SMOOT. I know of no other way on earth in which it can be done. We must leave it in some one's discretion.

Mr. WALSH of Montana. But why say "agreement"? How can you justify putting it up to the commissioner to make an agreement with the man?

Mr. SMOOT. There never has been a case where an account has been audited and that request has been made of the commissioner but that it has been granted. I know of no case.

Mr. McKELLAR. Why, Mr. President——

Mr. WALSH of Montana. That is all right, but the Senator can see that this puts the opportunity for the grossest kind of favoritism in the hands of the commissioner and the Secretary. They are governed by no rule at all.

Mr. SMOOT. There can not be a rule as long as there is an audit to be made, and there would be no agreement made until the audit was made.

Mr. WALSH of Montana. Why do you not simply say that after an audit is made he shall be entitled to a certificate to the effect that it is closed? Under what circumstances will the Secretary consider the case open, and under what circumstances will he consider it closed?

Mr. SMOOT. That is unfair to the taxpayer. Under such circumstances there may be an audit made, and then the taxpayer may want a refund, and unless he agrees to it the case will not be closed. Somebody has to decide it.

Mr. WALSH of Montana. Yes; but the point here is that he does not decide anything, and there is no rule fixed upon which he has to make any decision at all. It is apparently put entirely in the discretion of the Secretary and the commissioner to consider a case closed or to consider it open, as they see fit.

Mr. SMOOT. After the amount is determined every commissioner and the Secretary himself would be only too glad to close up those cases.

Mr. McKELLAR. Mr. President, if the Senator will look at page 246, in the first line, after the word "assessment," it says, "and an agreement is made in writing between the taxpayer and the commissioner, with the approval of the Secretary." Why not strike out those words and treat all people alike? I will withdraw my amendment if the Senator will agree to strike out those words.

Mr. SMOOT. If we strike those out, and it is agreed by the commissioner, the taxpayer can not file an application for refund.

Mr. McKELLAR. If the Senator will just look at his own bill; it begins in this way:

> If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment—

He has already received it. It is predicated upon his receipt of a refund or an abatement, or paying on a reassessment. That is the whole thing. Now, why submit it to the discretion of the Secretary or the commissioner, who can rule just as he likes?

I will say to the Senator that within the past week I have had complaint from a constituent of mine who said that after a settlement had been made a demand to change that settlement and have a refund paid back had been made to him.

Mr. SMOOT. If the amendment is agreed to, he could not file a petition for a refund. He would be out of it entirely. You are trying to take away a right he has. In other words, the taxpayer may not agree with the assessment at all.

Mr. KENDRICK. Mr. President, was not this provision included in the bill of two years ago for the first time?

Mr. SMOOT. In the act of 1921.

Mr. KENDRICK. It was intended to reduce the number of cases that were reopened, was it not?

Mr. SMOOT. And it has done so.

Mr. McKELLAR. I desire to withdraw my amendment and move, on page 246, line 1, after the word "assessment," to strike out the words "and an agreement is made in writing between the taxpayer and the commissioner, with the approval of the Secretary," and the words "that such determination and assessment shall be final and conclusive," down to and including the word "conclusive" on line 5.

Mr. CARAWAY. Would the Senator leave it, then, that the determination shall be final and conclusive except for mistake or fraud?

Mr. McKELLAR. Oh, yes.

Mr. CARAWAY. I want to ask the Senator while he has the floor—I can not get it——

The PRESIDENT pro tempore. The Secretary will report the amendment——

Mr. CARAWAY. Just a minute. I have the floor now, with the permission of the Senator from Tennessee, to ask him a question.

Mr. McKELLAR. I yield to the Senator from Arkansas.

Mr. CARAWAY. I wanted to make a suggestion as to an amendment I tried to offer some time earlier in the day, but I could not get recognition because somebody on the Republican side wanted to be recognized. I wanted to ask the Senator if he would not accept an amendment as a substitute for the one he has offered, which would provide, in substance, that where the Treasury Department furnishes an agent for the purpose of assisting the taxpayer to make out his return and he shall so assist the taxpayer, and the taxpayer shall accept that settlement and pay, that except for fraud or mistake it shall be conclusive, that it shall be opened only for fraud or mistake, just like any settlement between individuals.

Mr. McKELLAR. I will say to the Senator that I offered just such an amendment a few minutes ago.

Mr. CARAWAY. No; the Senator's was different.

Mr. McKELLAR. It is practically what was suggested. But I call the Senator's attention to this provision, with the words out that I have indicated should come out by my amendment. I feel that it will do the work required of it.

Mr. SMOOT. All I will say is that if that amendment is agreed to, the taxpayer will lose a great privilege.

Mr. McKELLAR. I do not agree with the Senator about that at all.

Mr. ASHURST. Mr. President, the words of the Senator from Utah have weight, and if they be true, they will determine my vote in this matter. Let us read the amendment, because what the Senator from Utah says on these matters I listen to; but I think he is wrong about this.

> SEC. 1106. If after a determination and assessment in any case the taxpayer has paid in whole any tax or penalty, or accepted any abatement, credit, or refund based on such determination and assessment—

Omitting down to the word "then" in line 5—

> then (except upon a showing of fraud or malfeasance or misrepresentation of fact materially affecting the determination or assessment thus made) (1) the case shall not be reopened or the determination and assessment modified by any officer, employee, or agent of the United States, and (2) no suit, action, or proceeding to annul, modify, or set aside such determination or assessment shall be entertained by any court of the United States.

In other words, where the taxpayer has received a credit—and it is extremely improbable he would receive credit unless he applied——

Mr. SMOOT. Where he pays an additional assessment.

Mr. McKELLAR. Either one; it is perfectly fair to him.

Mr. ASHURST. Or where he has received a refund.

Mr. SMOOT. It is the same thing.

Mr. ASHURST. It is assumed if he applied for a refund he would apply for all he was entitled to; he would not make it in separate bits and apply for various refunds. "Based on such determination and assessment" it is final. We are committed to an income-tax policy in the United States and we are going to adhere to it. I believe that if there be one thing that has tended to throw reproach upon the income-tax system it is the feeling that although a taxpayer may pay, and he may make an honest attempt to adjust his taxes, he is never certain that he is through. There are domiciliary visits, agents, letters coming to him saying his tax is not settled yet. Within my knowledge, in my own State after men have applied for refunds and the refunds have been granted to them, and they have used the money in their business, then comes down a killing decree that the refund was improperly paid, and within a few days the man is required to pay the amount back to the Government.

In all litigation, in all such matters as taxation, there should be what we call a time of repose, a statute of repose. Business, in my judgment, does not object to paying high taxes when it is necessary, and such are necessary; but business does object, and business has a right to object, to being constantly harassed. A business man pays his taxes but has no assurance that that is final and conclusive. He obtains a refund and uses the money in his business, and he has no assurance that that is final and conclusive. Surely when the Government, with all its technical agents at its command, makes a refund that ought to be conclusive except for fraud. When

the taxpayer pays his taxes that ought to be conclusive, except for fraud. I hope the able Senator from Utah will yield on this point, because in my judgment, with due deference to him, he is wrong about it.

Mr. SMITH. Mr. President, I want to call attention to a fact that I know has been in the observation of practically every Senator here. Very often it occurs that the delinquent, so called, has gone out of business. He is not in a position to pay the tax that has been assessed against him in the business in which he was employed at the time the alleged shortage or delinquency occurred. I do not know of any provision in the Federal law that has a tendency to make a man disregard the law and seek ways to avoid its operations more than this very lack of a definite settlement of the Federal income tax.

I heartily agree with my colleague, and I am sure there are those on the other side who believe that the benefit that will result from the amendment proposed now by the Senator from Tennessee will infinitely more than offset any harm that could come from leaving the law as it now stands, because you never know within five years when your tax is settled.

Mr. SMOOT. I am sure Senators who have spoken do not understand what the effect of this amendment would be.

Mr. SMITH. If the Senator will allow me, if I do not understand it, I certainly understand that there has been great confusion; there has been unnecessary loss and aggravation of the taxpayer under the loose system of leaving five years in which his case can be reopened at the expense of any Federal agent employed under this department. The department itself is eternally harassing them about some amount that is still due.

Mr. SMOOT. This has not anything to do with that.

Mr. SMITH. If it has not, then some amendment to the bill ought to be drawn that would have to do with it.

Mr. ASHURST. Without any attempt at flattery, I really want to hear what the Senator from Utah says, but if he does not talk louder I will abandon the attempt to hear. Will the Senator please talk louder?

Mr. SMOOT. I can not talk against the galleries and the floor, too.

Mr. SMITH. May I ask the Senator, if it does not apply to the very point the Senator from Tennessee offered his amendment to remedy, and the one to which the Senator from Arizona has spoken, to what does it apply?

Mr. SMOOT. It applies to additional assessments and refunds, and here is the case. A taxpayer may be assessed $10,000 or $100,000, and he may not believe that it is right, but he has to pay it just the same.

Under the amendment he could not file a claim for refund. He would have no relief whatever if this amendment were adopted. He could not even go to court. He would be barred entirely from any relief if the amendment were accepted. If that is what Senators want to do, let them vote for it, but I give notice here to Senators that that is what it would mean.

Mr. WALSH of Montana. Will the Senator yield?

Mr. SMOOT. Certainly.

Mr. WALSH of Montana. In order to relieve a danger of that kind, I suggest that it can be taken care of by putting in the words "without protest" after the word "paid" on page 245, so that it will read:

If after a determination and assessment in any case the taxpayer has paid without protest in whole any tax—

And so forth.

Mr. SMOOT. I have no objection to that, Mr. President. We have the same thing in the agreement that has been made for the taxpayer to sign. It is exactly in those words.

Mr. WALSH of Montana. That is the point I make. Let us assume two men have done all these things, have paid their taxes without protest, that the conditions are just exactly the same, and one fellow is able to get an agreement out of the commissioner to consider the matter closed, and the other fellow is not. No rule is laid down to guide the commissioner. It appears to be in his absolute and unrestrained discretion and favor. I do not think anybody can justify that part of the provision.

Mr. JONES of New Mexico. At what point does the Senator suggest that we put in the words "without protest"?

Mr. WALSH of Montana. After the word "paid."

Mr. JONES of New Mexico. I suggest that it come after the word "taxpayer," so that it would apply to the acceptance of the refund.

Mr. WALSH of Montana. It would be more appropriate, I think, after the word "has," so as to read, "has without protest paid in whole or in part."

Mr. JONES of New Mexico. I believe that would meet the objection.

Mr. SMOOT. There is just one case to which I want to call the Senator's attention which it may affect, so that we will not make any mistake about it, and I want the Senator to consider it. I do not see any objection to the amendment with the exception of this case. Suppose a man does pay his tax under protest, and the next day the Supreme Court or any other court should decide that it was not due; then he could not file for a refund if he had not paid it under protest.

Mr. WALSH of Montana. That is right, and it is a very general rule of law that one who pays taxes without protest, no matter whether it is right or wrong, never can recover them back. That is a very general rule of law.

Mr. SMOOT. I wanted to call the Senator's attention to that.

Mr. WALSH of Montana. That is quite right.

Mr. SMOOT. Therefore we did not put it in here, because we did not want to affect any taxpayer. We wanted him to have perfect freedom to file a petition for a refund.

Mr. WALSH of Montana. It does not seem to me he ought to have that right. If the assessment is made and he agrees to it and pays it without any protest at all, he ought not to be allowed afterwards to claim a refund.

Mr. SMOOT. I have no objection to that, but I felt it was my duty to call attention to cases where it would create a hardship.

Mr. McKELLAR. I do not believe the Senator from Montana offered that as an amendment, so I will offer it. In line 24, on page 245, after the word "has," I move to insert the words "without protest."

The PRESIDENT pro tempore. The amendment will be stated.

The READING CLERK. On page 245, line 24, after the word "has," insert a comma and the words "without protest" and a comma, so as to read:

If after a determination and assessment in any case the taxpayer has, without protest, paid in whole any tax or penalty, etc.

The PRESIDENT pro tempore. Does the Senator from Tennessee withdraw the first amendment offered by him?

Mr. McKELLAR. Only the first amendment has been withdrawn. Now let us agree to this amendment.

Mr. HEFLIN. That is, after the taxpayer has been served with notice of what he has been assessed and after he has been served with an accounting as to what his taxes are, and he pays without protest?

Mr. McKELLAR. That is it. It is an entirely proper amendment. May we agree to that and then take the next amendment on page 246?

The PRESIDENT pro tempore. It is impossible for the Chair to ascertain whether the Senator is ready to have a vote upon his amendment.

Mr. McKELLAR. I am ready. I will offer it again. After the word "has," in line 24, page 245, I move to insert the words "without protest."

The PRESIDENT pro tempore. The question is upon the amendment just stated by the Senator from Tennessee.

The amendment was agreed to.

Mr. McKELLAR. On page 246, in line 1, I move to strike out the words "and agreement is made in writing between the taxpayer and the commissioner, with the approval of the Secretary, that such determination and assessment shall be final and conclusive."

The PRESIDENT pro tempore. The question is upon agreeing to the amendment offered by the Senator from Tennessee.

The amendment was agreed to.

Mr. JONES of New Mexico. Mr. President, on behalf of the minority members of the committee I have two amendments which I desire to offer. They are both important amendments. One relates to the proceedings before the board of appeals. On page 238, paragraph (h) is proposed to be stricken out and the amendment which I send to the desk substituted therefor. I ask that the amendment may be reported.

The PRESIDENT pro tempore. The Secretary will read the amendment for the information of the Senate.

The READING CLERK. On page 238 strike out lines 17 to 25, inclusive, and on page 239 strike out lines 1 to 6, inclusive, and insert in lieu thereof the following:

(h) Notice and an opportunity to be heard shall be given to the taxpayer and the commissioner and a decision shall be made as quickly as practicable. Hearings before the board and its divisions shall be open to the public. The proceedings of the board and its divisions shall be conducted in accordance with such rules of evidence and procedure as the board may prescribe. The testimony taken at the hearing shall be reduced to writing. It shall be the duty of the board and of

each division to make a report in writing of its findings of fact and decision in each case and a copy of its report shall be entered of record and a copy furnished the taxpayer. Such report and all evidence received by the board and its divisions shall be public records open to the inspection of the public. The board may provide for the publication of its reports in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports of the board therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The principal office of the board shall be in the District of Columbia, but the board or any of its divisions may sit at any place within the United States. The times and places of the meetings of the board, and of its divisions, shall be prescribed by the chairman with a view to securing reasonable opportunity to taxpayers to appear before the board or any of its divisions, with as little inconvenience and expense to taxpayers as is practicable.

Mr. FLETCHER. Does that interfere with the amendment which we have already agreed to? Is there any conflict between the two?

Mr. JONES of New Mexico. No; not at all. The amendment which I have proposed on behalf of the minority of the committee is an important one, and I hope that Senators will enable us to at least understand it.

As Senators all know, we have provided for boards of appeal. These boards are to have their hearings not only in the District of Columbia, but in different places throughout the country. The hearings are for judicial purposes. They are supposed to be conducted along the lines of judicial procedure. They are in effect courts of appeal. They determine controversies between the Government and the taxpayers. Evidence is to be submitted bearing upon the question, and a decision is to be reached which, for practical purposes, in most cases at least, is a final decision. My contention is that whenever there is a controversy between the Government and a taxpayer which is to be decided, the proceedings leading up to that decision should be public proceedings. Under existing law they meet in secret and conduct their hearings in secret. They may hear one witness or one client here, and another witness somewhere else; they may receive affidavits or conversations, and in any way arrive at a decision, all in secret. I submit that when there is a controversy between the Government and a taxpayers which shall follow through the various lines of procedure and finally reach the board of appeals, when it gets there all the proceedings should be public proceedings, the evidence should be taken down in writing, there should be a finding of fact and the decision of the board should be in writing and filed in the case just the same as in any other judicial proceeding, because that is what the case would be. It would be a judicial proceeding.

To say that all that shall be done in secret is obnoxious to everything which we have been taught regarding judicial procedure as American citizens under our great system of jurisprudence. The proceeding should be public. Their decisions should be public. The testimony should be taken down in writing, and it should not be heresay testimony which may be whispered into the ear of a member of the board of appeals, or a mere affidavit of some stranger submitted in secret. If it is at all necessary or advisable that tax returns shall be made public and made a matter of public record, it is of much greater concern that those judicial proceedings shall be public and become permanent records and open to a public inspection, so that we may understand the facts upon which decisions are reached, and the taxpayers in the country may have an opportunity to know just how it all happens.

Mr. WALSH of Montana. Mr. President, the amendment offered by the Senator from New Mexico, in my judgment, is one of very great merit. It is in accordance with some suggestions I made earlier in the day concerning the terms of this particular part of the bill. I want to suggest, however, to the Senator from New Mexico some slight changes.

The amendment provides that the board shall make a report in writing of its findings of fact and decision in each case. I think the board ought to be required to write an opinion, not a mere decision, but on any question of law that is involved it ought to set out in brief at least the line of argument by which it arrives at its decision. I think that the proceedings ought to approximate as nearly as practicable to proceedings in court. It really is intended in a way as an equity judicial tribunal for the determination of those matters. There is no means that can be devised of making a court decide the cases aright in accordance with sound reason better than by requiring the court to file its opinion, showing to the world how it arrived at the conclusion which it reaches.

I accordingly suggest to the Senator from New Mexico that, after the word "and," in line 2, page 2, there be inserted the words "its opinion and," so it would read—

make a report in writing of its findings of fact and its opinion and decision in each case.

Mr. JONES of New Mexico. I gladly accept the amendment suggested by the Senator from Montana.

Mr. WALSH of Montana. Now, another thing. These reports ought to be published, so that they would be subject to criticism by anyone who has occasion to refer to them, and so that they might serve as a guide to other taxpayers and to attorneys having occasion to present matters. Accordingly I suggest the word "may," being the first word in line 7, page 2, be stricken out and the word "shall" be inserted in lieu thereof, so it would read "the board shall provide for the publication of its reports," and so forth.

Mr. JONES of New Mexico. I am glad to accept that amendment also.

Mr. WALSH of Montana. Then, so there may be no doubt about it, I would provide for the publication of the reports by the Government Printing Office. I would insert the words "at the Government Printing Office," so it would read:

The board shall provide for the publication of its reports at the Goverment Printing Office.

That can be done practically without expense, because like bulletins of the Internal Revenue Bureau are so printed, and a rule could be provided that they could be sold at any time at actual cost of preparation.

Mr. JONES of New Mexico. I am glad to accept the amendment proposed by the Senator from Montana.

Mr. SMOOT. I will ask the Senator from Montana if he only used the phrase "printed at the Government Printing Office" whether we could make any charge for documents so printed.

Mr. WALSH of Montana. The Senator from Utah will know about that better than I. If there is any doubt about it, I would insert a provision reading "which shall be subject to sale upon the same terms as"——

Mr. SMOOT. As other public documents.

Mr. McKELLAR. I have an amendment on the same subject, which reads in part:

The opinions of the board shall be printed by the Government Printing Office and sold to the public in the same manner as the present Internal Revenue Bulletins are sold.

Mr. SMOOT. The Senator from Tennessee should not use the word "bulletins," because that only covers one class.

Mr. McKELLAR. "Other public documents" would be proper.

Mr. SMOOT. "Other public documents" would be a correct expression, because that is what these reports will be.

Mr. McKELLAR. That will be all right.

Mr. WALSH of Montana. I think it would be covered in this way: After line 12 on the same page, insert "such reports shall be subject to sale in the same manner and upon the same terms as other public documents."

Mr. SMOOT. That is all right.

Mr. JONES of New Mexico. I accept that amendment.

The PRESIDENT pro tempore. The Senator from New Mexico modifies his proposed amendment, and the modifications will be stated by the Secretary.

The READING CLERK. On page 2, line 2, it is proposed to modify the amendment by inserting before the word "decision" the words "its opinion and"; at the beginning of line 7 to strike out "may" and insert "shall"; after the word "reports," in line 7, to insert "at the Government Printing Office"; and after line 12 to insert "Such reports shall be subject to sale in the same manner and upon the same terms as other public documents."

The PRESIDENT pro tempore. The question is upon the amendment offered by the Senator from New Mexico as modified. [Putting the question.] The Chair is in doubt.

Mr. JONES of New Mexico. I ask for the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. LODGE (when his name was called). Making the same announcement as heretofore with regard to my pair and its transfer, I vote "nay."

Mr. SMITH (when his name was called). I have a general pair with the Senator from South Dakota [Mr. STERLING]. I transfer that pair to the Senator from Tennessee [Mr. SHIELDS] and vote "yea."

The roll call was concluded.

Mr. SIMMONS (after having voted in the affirmative). I transfer my general pair with the junior Senator from Oklahoma [Mr. HARRELD] to the Senator from Michigan [Mr. FERRIS] and let my vote stand.

Mr. JONES of New Mexico (after having voted in the affirmative). I transfer my pair with the Senator from Maine [Mr. FERNALD] to the Senator from Washington [Mr. DILL] and allow my vote to stand.

Mr. ERNST. Making the same announcement as before relative to my pair and its transfer, I vote "nay."

Mr. WARREN (after having voted in the negative). I find that my regular pair the Senator from North Carolina [Mr. OVERMAN] has not voted. I transfer my pair with him to the Senator from Maryland [Mr. WELLER], and allow my vote to stand.

Mr. McLEAN (after having voted in the negative). I inquire if the Senator from Virginia [Mr. GLASS] has voted.

The PRESIDENT pro tempore. That Senator has not voted.

Mr. McLEAN. I have a pair with that Senator, which I transfer to my colleague [Mr. BRANDEGEE], and allow my vote to stand.

Mr. CURTIS. I desire to announce that the Senator from Idaho [Mr. GOODING] is paired with the Senator from North Dakota [Mr. LADD].

The result was announced—yeas 35, nays 28, as follows:

YEAS—35

Adams	George	King	Shipstead
Ashurst	Gerry	McKellar	Simmons
Bayard	Harris	Mayfield	Smith
Brookhart	Harrison	Neely	Swanson
Broussard	Heflin	Pittman	Trammell
Caraway	Howell	Ralston	Walsh, Mass.
Copeland	Johnson, Minn.	Reed, Mo.	Walsh, Mont.
Dial	Jones, N. Mex.	Robinson	Wheeler
Fletcher	Kendrick	Sheppard	

NAYS—28

Ball	Edge	McLean	Smoot
Bursum	Ernst	Moses	Spencer
Cameron	Fess	Oddie	Stanfield
Colt	Hale	Pepper	Wadsworth
Cummins	Jones, Wash.	Phipps	Warren
Curtis	Keyes	Reed, Pa.	Watson
Dale	Lodge	Shortridge	Willis

NOT VOTING—33

Borah	Ferris	Lenroot	Shields
Brandegee	Frazier	McCormick	Stanley
Bruce	Glass	McKinley	Stephens
Capper	Gooding	McNary	Sterling
Couzens	Greene	Norbeck	Underwood
Dill	Harreld	Norris	Weller
Edwards	Johnson, Calif.	Overman	
Elkins	Ladd	Owen	
Fernald	La Follette	Ransdell	

So the amendment of Mr. JONES of New Mexico as modified was agreed to.

Mr. WILLIS. I offer to the pending bill the amendment which I send to the desk and ask that it may be considered as pending and that it may be printed. I will call it up to-morrow.

The PRESIDENT pro tempore. The amendment will be printed and will be considered the pending amendment.

The amendment proposed by Mr. WILLIS is as follows:

On page 50, line 24, at the end of the line, to insert in parentheses "(including preventive and constructive service for relief, rehabilitation, health, character building, and citizenship)."

ADDITIONAL BILLS INTRODUCED

Additional bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. SPENCER:

A bill (S. 3270) authorizing the President to reappoint Walter F. Martin, formerly a captain of Cavalry, United States Army, an officer of Cavalry, United States Army (with accompanying papers); to the Committee on Military Affairs.

A bill (S. 3271) for the relief of Herman A. Lueking; to the Committee on Claims.

ADDRESS BY SECRETARY OF COMMERCE HERBERT HOOVER

Mr. SHORTRIDGE. Mr. President, I hold in my hand a very interesting, thoughtful, and I think instructive address delivered by the Secretary of Commerce, Mr. Hoover, yesterday, before the annual meeting of the United States Chamber of Commerce held at Cleveland, Ohio. I think it will be worth reading and I ask——

Mr. McKELLAR. Is it in any sense a political address?

Mr. SHORTRIDGE. In no sense whatever. It deals with economic questions and has no tinge of political bias or expression. I ask that the address may be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS OF SECRETARY OF COMMERCE HERBERT HOOVER AT THE ANNUAL MEETING OF THE UNITED STATES CHAMBER OF COMMERCE, CLEVELAND, OHIO, EVENING OF MAY 7, 1924

SOME PHASES OF THE GOVERNMENT IN BUSINESS

Your chamber has recently submitted to its members a number of recommendations upon principles of business conduct in the form of a report of your committee on business ethics. The very fact of issuing such a report is of interest. I wish to discuss the whole subject in its wider sense and in the relation of government to business.

The advancement of science and our increasing population require constantly new standards of conduct and breed an increasing multitude of new rules and regulations. The basic principles laid down in the Ten Commandments and the Sermon on the Mount are as applicable to-day as when they were declared, but they require a host of subsidiary clauses. The 10 ways to evil in the time of Moses have increased to 10,000 now.

A whole host of rules and regulations are necessary to maintain human rights with this amazing transformation into an industrial area. Ten people in a whole county, with a plow apiece, did not elbow each other very much. But when we put 7,000,000 people in a county, with the tools of electricity, steam, 30-floor buildings, telephones, miscellaneous noises, street cars, railways, motors, stock exchanges, and what not, then we do jostle each other in a multitude of directions. Thereupon our lawmakers supply the demand by the ceaseless piling up of statutes in attempts to keep the traffic open; to assure fair dealing in the economic world; to eliminate its wastes; to prevent some kind of abuse or some kind of domination. Moreover, with increasing education our senses become more offended and our moral discrimination increases, for all of which we discover new things to remedy. In one of our States over 1,000 laws and ordinances have been added in the last eight months. It is also true that a large part of them will sleep peacefully in the statute book.

The question we need to consider is whether these rules and regulations are to be developed solely by government or whether they can not be in some large part developed out of voluntary forces in the Nation. In other words, can the abuses which give rise to government in business be eliminated by the systematic and voluntary action of commerce and industry itself? This is indeed the thought behind the whole gamut of recent slogans, "Less government in business," "Less government regulation," "A square deal," "The elimination of waste," "Better business ethics," and a dozen others.

National character can not be built by law. It is the sum of the moral fiber of its individuals. When abuses which rise from our growing system are cured by live individual conscience, by initiative in the creation of voluntary standards, then is the growth of moral perceptions fertilized in every individual character.

No one disputes the necessity for constantly new standards of conduct in relation to all these tools and inventions. Even our latest great invention, radio, has brought a host of new questions. No one disputes that much of these subsidiary additions to the Ten Commandments must be made by legislation. Our public utilities are wasteful and costly unless we give them a privilege more or less monopolistic. At once when we have business affected with monopoly we must have regulation by law. Much of even this phase might have been unnecessary had there been a higher degree of responsibility to the public, higher standards of business practice among those who dominated these agencies in years gone by.

There has been, however, a great extension of government regulation and control beyond the field of public utilities into the fields of production and distribution of commodities and credit. When legislation penetrates the business world it is because there is abuse somewhere. A great deal of this legislation is due rather to the inability of business hitherto to so organize as to correct abuses than to any lack of desire to have it done. Sometimes the abuses are more apparent than real, but anything is a handle for demagoguery. In the main, however, the public acts only when it has lost confidence in the ability or willingness of business to correct its own abuses.

Legislative action is always clumsy—it is incapable of adjustment to shifting needs. It often enough produces new economic currents more abusive than those intended to be cured. Government too often becomes the persecutor instead of the regulator.

The vast tide of these regulations that is sweeping onward can be stopped if it is possible to devise, out of the conscience and organization of business itself, those restraints which will cure abuse; that will eliminate waste; that will prevent unnecessary hardship in the working of our economic system; that will march without larger social understanding. Indeed, it is vitally necessary that we stem this tide if we would preserve that initiative in men which builds up the character, intelligence, and progress in our people.

I am one of those who believe in the substratum of inherent honesty, the fine vein of service and kindliness in our citizenship. The

vast volume of goods and services that daily flow through the land would cease instantly were it not for the instinctive dependence of our people upon the moral responsibility of the men who labor in the shops and farms and the men who direct our production and distribution.

In these times of muddled thought it is sometimes worth repeating a truism. Industry and commerce are not based upon taking advantage of other persons. Their foundations lie in the division of labor and exchange of products. For through specialization we increase the total and variety of production and secure its diffusion into consumption. By some false analogy to the "survival of the fittest" many have conceived the whole business world to be a sort of economic "dog eat dog." We often lay too much emphasis upon its competitive features, too little upon the fact that it is in essence a great cooperative effort. And, our homemade, Bolshevist-minded critics to the contrary, the whole economic structure of our Nation and the survival of our high general levels of comfort are dependent upon the maintenance and development of leadership in the world of industry and commerce. Any contribution to larger production, to wider diffusion of things consumable and enjoyable, is a service to the community, and the men who honestly accomplish it deserve high public esteem.

The thing we all need to searchingly consider is the practical question of the method by which the business world can develop and enforce its own standards and thus stem the tide of governmental regulation. The cure does not lie in mere opposition. It lies in the correction of abuse. It lies in an adaptability to changing human outlook.

The problem of business ethics as a prevention of abuse is of two categories: Those where the standard must be one of individual moral perceptions and those where we must have a determination of standards of conduct for a whole group in order that there may be a basis for ethics.

The standards of honesty, of a sense of mutual obligation, and of service were determined 2,000 years ago. They may require at times to be recalled. And the responsibility for them increases infinitely in high places, either in business or government, for there rests the high responsibility for leadership in fineness of moral perception. Their failure is a blow at the repute of business and at confidence in government itself.

The second field, and the one which I am primarily discussing, is the great area of indirect economic wrong and unethical practices that spring up under the pressures of competition and habit. There is also the great field of economic waste through destructive competition, through strikes, booms and slumps, unemployment, through failure of our different industries to synchronize, and a hundred other causes which directly lower our productivity and employment. Waste may be abstractly unethical, but in any event it can only be remedied by economic action.

If we are to find solution to these collective issues outside of government regulation, we must meet two practical problems:

First. There must be organization in such form as can establish the standards of conduct in this vast complex of shifting invention, production, and use. There is no existing basis to check the failure of service or the sacrifice of public interest. Some one must determine such standards. They must be determined and held flexibly in tune with the intense technology of trade.

Second. There must be some sort of enforcement. There is the perpetual difficulty of a small minority who will not play the game. They too often bring disrepute upon the vast majority; they drive many others to adopt unfair competitive methods which all deplore; their abuses give rise to public indignation and clamor which breed legislative action.

I believe we now for the first time have the method at hand for voluntarily organized determination of standards and their adoption. I would go further; I believe we are in the presence of a new era in the organization of industry and commerce in which, if properly directed, lies forces pregnant with infinite possibilities of moral progress. I believe that we are, almost unnoticed, in the midst of a great revolution—or, perhaps, a better word, a transformation in the whole superorganization of our economic life. We are passing from a period of extremely individualistic action into a period of associational activities.

Practically our entire American working world is now organized into some form of economic association. We have trade associations and trade institutes embracing particular industries and occupations. We have chambers of commerce embracing representatives of different industries and commerce. We have the labor unions representing the different crafts. We have associations embracing all the different professions—law, engineering, medicine, banking, real estate, and what not. We have farmers' associations, and we have the enormous growth of farmers' cooperatives for actual dealing in commodities. Of indirect kin to this is the great increase in ownership of industries by their employees and customers, and again we have a tremendous expansion of mutualized insurance and banking.

Although such associational organizations can trace parentage to the middle ages, yet in their present implication they are the birth of the last 50 years, and in fact their growth to enveloping numbers is of the last 25 years. We have, perhaps, 25,000 such associational activities in the economic field. Membership, directly or indirectly, now embraces the vast majority of all the individuals of our country. Action of wide import by such associations has become an important force of late in our political, economic, and social life.

It is true that these associations exist for varied purposes. Some are strong in recognition of public responsibility and large in vision. Some are selfish and narrow. But they all represent a vast ferment of economic striving and change.

Ever since the factory system was born there has been within it a struggle to attain more stability through collective action. This effort has sought to secure more regular production, more regular employment, better wages, the elimination of waste, the maintenance of quality or service, decrease in destructive competition and unfair practices, and ofttimes to assure prices or profits. The first phase of development on the business side was "pools" in production and distribution. They were infected with imposition upon the public and their competitors. In some part there were struggles to correct abuse and waste. They were followed by an era of capital consolidations with the same objects, but also to create a situation of unbreakable agreements. Both were against public interest, and the public intervened through the Sherman Act. Yet underneath all these efforts there was a residuum of objects which were in public interest.

Associational activities are, I believe, driving upon a new road where the objectives can be made wholly and vitally of public interest. The legitimate trade associations and chambers of commerce with which I am now primarily concerned possess certain characteristics of social importance and the widest differentiation from pools and trusts. Their membership must be open to all members in the industry or trade, or rival organizations enter the field at once. Therefore, they are not millstones for the grinding of competitors, as was the essence of the old trade combinations. Their purpose must be the advancement of the whole industry or trade, or they can not hold together. The total interdependence of all industries and commerce compels them in the long run to go parallel to the general economic good. Their leaders rise in a real democracy without bosses or political manipulation. Citizens can not run away from their country if they do not like the political management, but members of voluntary associations can resign and the association dies.

I believe that through these forces we are slowly moving toward some sort of industrial democracy. We are upon its threshold if these agencies can be directed solely to constructive performance in the public interest.

All this does contain some dangers, but they will come only from low ethical standards. With these agencies used as the machinery for the cultivation and spread of high standards and the elimination of abuses, I am convinced that we shall have entered the great era of self-governing industry and business which has been a dream to many thinkers. A self-governing industry can be made to render needless a vast area of governmental interference and regulation which has grown up out of righteous complaint against the abuses during the birth pains of an industrial world.

Some people have been alarmed lest this associational movement means the destruction of our competitive system, lest it inevitably destroy the primary individualism which is the impulse of our society. This alarm is groundless. Its rightful activities do not destroy equality of opportunity or initiative. In fact, they offer new avenues of opportunity for individuals to make progress toward leadership in the community. Any one of them will die at once if it does not offer equality of opportunity to its members, or if it restricts its membership rival associations at once emerge. They are the safeguards of small business and thus prevent the extinction of competition. They are the alternative to capital consolidation. They are not a growth toward socialism—that is, government in all business—they are, in fact, a growth directly away from such an idea.

Right here, for the benefit of the gloomy persons who have a frozen belief that every form of associational activity is a conspiracy to fix prices and to restrain trade, to perpetuate tyranny of employer or employee, we may remember that there are some crooks in every line of endeavor. The underlying purposes of the vast majority are constructive. A minority may be violating the Ten Commandments and need the application of criminal standards. I am speaking, however, of something more vital than porch climbing.

I am, of course, well aware of the legal difficulties that surround certain types of associational work. I do not believe that the development of standards of conduct or the elimination of abuses in public interest has ever been challenged as a violation of the Sherman Act. Moreover, to establish either a physical or a moral standard directly sharpens competition.

These associational activities are the promising machinery for much of the necessary determination of ethical standards, for the elimination of useless waste and hardship from the burden of our economic engines. Moreover, we have in them not only the agencies by which

standards can be set, but by cooperative action among the associations representing the different stages of production, distribution, and use we can secure a degree of enforcement far wider than mere public opinion in a single trade.

When standards are agreed upon by the associations representing the manufacturer and distributor and by those representing the user, we have a triple force interacting for their enforcement.

Now I do not wish anyone to think my feet are not on the ground in all this, and I propose to give a few illustrations from real life of what can be effected by constructive associations and by cooperation among them.

The Department of Commerce has, at the request of the lumber industry, held a number of conferences to discuss the rules of the road in that industry and its relations to the other industries and the common good. The problem was to establish more general and more constructive standards of practice, ethics, and waste elimination.

In the toil of formulating these standards there arose a question of how thick a 1-inch board should be. It sounds easy. But it quickly developed to be a question whether it should be 1 inch thick when it was green, after it was dried, when planed on one side, or when planed on both sides. It developed not only that a choice had to be made among these four alternatives, but also that this choice had to be based upon a proper consideration for the conservation of our forests on one hand and the provision of a material of such structural character as to constitute a square deal to the consumer on the other. It also developed that there were 32 different thicknesses of a 1-inch board in current use and that some minority of manufacturers in the drive of unfair competition were gradually thinning the board *until it* threatened to become paper. There also had to be developed the exact differences which threw a board into four or five different grades, and there had to be a determination of standard trade names for different species of wood. The point was that an accurate standard had to be determined before discrimination as to fair dealing and public service could be gauged. That occasion was the foundation of ethics in 1-inch boards.

These conferences established some 80 questions involving the whole technology of lumber and comprising for the first time a definite series of national standards. Here is the sum of our problem. It could only be accomplished through an association in the industry. It is proof of industrial conscience and service.

The second part of the practical problem which I enumerated before is enforcement. Again associational activities were called upon. The manufacturers were not alone in these conferences, but the distributor and consumer were also represented by the Architects' Association, the Building Contractors' Association, the railway and other purchasing associations, and the Retailers' Associations. The action and reaction of the buyer and seller upon each other in their desire to secure fair dealing in industry can procure enforcement. Joint inspection bureaus have been erected where complaint for violation can be lodged and determination made. Enforcement may not be 100 per cent, but the standards are there and a sense of individual responsibility and self-interest will eventually, I am confident, make them universal.

For years aggrieved persons and some of the trade have been agitating this question of lumber standards in Congress. Numerous bills have been introduced. If this effort succeeds no legislation will be necessary. This is keeping the Government out of business through the remedy of abuses by business itself.

I propose now to mention one other case of a most vitally important and entirely different order, rendered possible only through associational activity in which the Department of Commerce has been in active cooperation. That is in the bituminous coal industry. There have been developed in this industry, as many of you are aware, 30 per cent too many mines operating intermittently during nearly every week of the year with a large seasonal dip in summer. Thus they required 30 per cent more labor and 30 per cent more capital than was necessary to produce the Nation's coal. One effect of this situation was that some proportion of the employees secured too few days' work to yield them a reasonable standard of living, even at the apparently high daily wage. This minority of employees were naturally a constant source of agitation and disturbance. The result of all this was a higher cost of producing coal and consequently a higher national coal bill, speculation and uncertainty to the operators, hardship and difficulty and instability to a considerable portion of the workers. The fundamental cause was a vicious cycle of seasonal fluctuation in demand, annual shortages in coal cars, and periodic strikes which grew out of the instability of labor relationships. These periods of shortened or suspended production always resulted in famine prices for coal and great stimulation to the opening of new mines.

At least four Government commissions have examined this question. Probably 40 bills have been introduced into Congress proposing governmental regulation in an attempt to correct the abuses and wastes and public danger that lay in the situation.

The associational agencies in the field were those of the operators, of labor, of the railway executives, and of the various associations of industries as consumers. The first problem was to secure a general knowledge of the causes to which I feel the Department of Commerce contributed substantially. Remedy was undertaken in many directions. The railway association induced the construction of a more ample supply of coal cars and greater expedition and interchange in handling between different railways. The Department of Commerce, in cooperation with the chambers of commerce, manufacturers' associations, railway and public utilities associations, secured that more coal should be put in storage during the summer season. The result was that last year for the first time in many years we had no interruption in the distribution of coal due to car shortage. One element of the vicious cycle in this situation is eliminated, provided we can continue this same cooperation in future.

The second part of the solution was the general agreement by both operators and labor that stability could not be restored in the industry unless there was a long period of continuous operation, in which the absence of coal famines and profiteering would eliminate the speculative and high-cost producer and reduce the units in the industry and thus its intermittency. The labor agreement between these associations, made last February for a term of three years, has assured this improvement.

Here we have an example of the most profound national importance in at least the beginning of stabilization of an industry involved in a most vicious cycle of waste and trouble. The national savings can be measured in hundreds of millions and the human hardships greatly lessened. There will be some preliminary hardship in so great a self-imposed surgical operation, but I am confident it will heal to the mutual interest of the operators, the public, and the workers. To-day I do not believe there is any sentiment for Government regulation of the bituminous coal industry.

Another instance of great interest in which I had the honor to participate was the abolition of the 12-hour day in the steel industry through the action of the steel association.

I could give you a multitude of examples of the beginnings of constructive self-government in industry among many other associations. The very publication of codes of ethics by many associations instilling service as the primary purpose; the condemnation of specific unfair practices; the insistence upon a higher plane of relationships between employer and employee—all of them are at least indications of improving thought and growing moral perceptions.

All of this is the strong beginning of a new force in the business world. The individual interest is wrapped up with public interest. They can find expression only through association. Three years of study and intimate contact with associations of economic groups, whether in production, distribution, labor, or finance, convince me that there lies within them a great moving impulse toward betterment.

If these organizations accept as their primary purpose the lifting of standards, if they will cooperate together for voluntary enforcement of high standards, we shall have proceeded far along the road of elimination of government from business. American business is never secure unless it has public confidence behind it. Otherwise, it will always be a prey to demagoguery and filled with discouragement.

The test of our whole economic and social system is its capacity to cure its own abuses. New abuses and new relationships to the public interest will occur as long as we continue to progress. If we are to be wholly dependent upon Government to cure these abuses, we shall by this very method have created an enlarged and deadening abuse through the extension of bureaucracy and the clumsy and incapable handling of delicate economic forces. The old law merchant is the basis of much of our common law. A renaissance of a new law merchant could so advance our standards as to solve much of the problem of government in business.

American business needs a lifting purpose greater than the struggle of materialism. Nor can it lie in some evanescent, emotional, dramatic crusade. It lies in the higher pitch of economic life, in a finer regard for the rights of others, a stronger devotion to obligations of citizenship that will assure an improved leadership in every community and the Nation; it lies in the organization of the forces of our economic life, so that they may produce happier individual lives, more secure in employment and comfort, wider in the possibilities of enjoyment of nature, larger in its opportunities of intellectual life. Our people have already shown a higher sense of responsibilities in these things than those of any other country. The ferment or organization for more definite accomplishment of these things in the practical day-by-day progress of business life is alive in our business world.

The Government can best contribute through stimulation of and cooperation with voluntary forces in our national life, for we thus preserve the foundations upon which we have progressed so far—the initiative of our people. With vision and devotion these voluntary forces can accomplish more for America than any spread of the hand of government.

RECESS

Mr. SMOOT. I move that the Senate take a recess until 11 o'clock to-morrow morning.

The motion was agreed to; and (at 10 o'clock and 26 minutes p. m.) the Senate took a recess until to-morrow, Friday, May 9, 1924, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES

THURSDAY, *May 8, 1924*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

We bless Thee, our Father in heaven, that every morning is the world made new and every day is a fresh beginning. We thank Thee for this inspiring truth, and let this day be marked by prudence, foresight, and the wisdom of the wise. We would cease our vain, despondent fears and remember Thy glorious works, Thy promises, Thy power to save and claim eternally Thy own. Do Thou guide and bless us in all our relations to life, and keep us in the ways of righteousness, truth, and peace, through Christ. Amen.

The Journal of the proceedings of yesterday was read and approved.

EAMON DE VALERA

Mr. BOYLAN. Mr. Speaker, I rise to make a privileged motion. I move to discharge the Committee on Foreign Affairs from the further consideration of House Resolution 256 and pass the same. This resolution was introduced by me April 10, a resolution of inquiry calling upon the Secretary of State to furnish the House with whatever information he may have in his possession relative to the status of Hon. Eamon de Valera.

Mr. CRAMTON. Mr. Speaker, I reserve a point of order on the resolution.

Mr. CHINDBLOM. And I reserve the right to object.

The SPEAKER. The gentleman from New York calls up a resolution, claiming it is privileged, House Resolution 256, calling upon the Secretary of State, if not incompatible with the public interest, to furnish the House at the earliest possible date such data and information as he may have concerning the present status of the imprisonment of the Hon. Eamon de Valera.

Mr. LONGWORTH. Will the gentleman from New York yield?

Mr. BOYLAN. I will.

Mr. LONGWORTH. I do not observe any member of the Committee on Foreign Affairs here. Does the gentleman object to making the request later in the day?

Mr. BOYLAN. I would not if I would not be foreclosed; if I am permitted to make it under any order of business.

Mr. LONGWORTH. I think the gentleman would not be foreclosed from making the request, but I do not see a member of the Committee on Foreign Affairs here, and I think it ought to be brought up when some member of the committee is present.

Mr. LAGUARDIA. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. LAGUARDIA. Even though a member of the Committee on Foreign Affairs were present, an objection to the bill would not avail on the privileged motion of the gentleman from New York to discharge the committee and pass the resolution.

Mr. LONGWORTH. I do not know whether it is privileged or not and I reserve a point of order.

Mr. BOYLAN. Under the rule this is a resolution of inquiry, simply calling for information, and does not call for any action on the part of the committee other than to furnish the House with the information.

The SPEAKER. The Chair does not see at first blush why it is not privileged. The usual practice is, when a Member intends to bring up a resolution of this kind, to inform the chairman of the committee that he is going to do it.

Mr. LONGWORTH. If it is privileged, and I have not had the opportunity to examine it, the gentleman from New York can call it up any time to-day.

Mr. BOYLAN. That would be satisfactory to me.

Mr. CRAMTON. I would not want it to be taken for granted that it is privileged.

The SPEAKER. The gentleman from Michigan reserves a point of order.

Mr. CHINDBLOM. Since the gentleman from New York did not make a unanimous-consent request, I withdraw my reservation of the objection.

CONFERENCE REPORT ON IMMIGRATION BILL

Mr. JOHNSON of Washington. Mr. Speaker, I ask unanimous consent that I may have until 11 o'clock p. m. to-night to file the conference report and a report of the managers on the part of the House on the immigration bill, H. R. 7995.

The SPEAKER. The gentleman from Washington asks unanimous consent that he may have until 11 o'clock to-night to file a report of the managers of the conference on the immigration bill. Is there objection?

Mr. CONNALLY of Texas. Reserving the right to object, I would like to ask the gentleman, Is this the last report; have the conferees had their last seance with the President on this subject?

Mr. JOHNSON of Washington. I hope so and I hope that we have a good report to make.

Mr. SABATH. Reserving the right to object, what is the gentleman's request?

The SPEAKER. That he have until 11 o'clock to-night to file a report of the managers on the immigration bill.

Mr. SABATH. Not having agreed to the conference report, is it necessary for me to reserve all points of order, or will it suffice when the report is called up for me to reserve points of order?

The SPEAKER. That can be reserved until the proper time.

Mr. SABATH. Having disagreed with the conferees, have I a right under the rule to file minority views or dissenting views?

The SPEAKER. The Chair does not remember any dissenting views or minority views on a conference report.

Mr. RAKER. Will the gentleman from Illinois yield? We were given authority, were we not, by the chairman of the committee to file minority views on the subject?

Mr. SABATH. Yes; but that would not bind the House.

The SPEAKER. The Chair is informed that it is without precedent to have minority views on a conference report.

Mr. SABATH. Mr. Speaker, I ask unanimous consent that I may extend my remarks in the RECORD on the conference report on the immigration bill.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. RAKER. Reserving the right to object, it is understood that I may see the report before it is presented to the House?

Mr. JOHNSON of Washington. Certainly.

The SPEAKER. Is there objection to the request of the gentleman from Illinois [Mr. SABATH]?

There was no objection.

Mr. SABATH. Mr. Speaker, the conferees on the immigration bill, taking advantage of parliamentary technicalities and of previous rulings, have, without authority of the House, deliberately embodied provisions, firstly, that have been rejected by the House; secondly, that were not considered by the House; thirdly, that were not in conference; and fourthly, have extended the time when the Japanese provision should go into effect provided for in the Senate as well as the House bill, namely, March 1, 1925.

Though the report submitted on the part of the managers of both Houses may be held not to be in violation of former rulings, to my mind it violates the spirit and intent of the rules of the House. However, being desirous to familiarize the Members of the House with at least the most important changes that have been agreed upon, I will not dwell whether the report is in order or not, but will briefly point out the differences between the bill as it passed the House and the report before us. In the first place, as to what I consider important deviation from the House bill is the adoption on the part of the managers of the so-called Reed national-origin scheme adopted by the Senate, but which, when presented on the floor of the House during the consideration of the immigration bill, was defeated by a large majority. This, the national-origin scheme—and that is the only way I can designate it—reads as follows:

SEC. 11. (b) The annual quota of any nationality for the fiscal year beginning July 1, 1927, and for each year thereafter, shall be a number which bears the same ratio to 150,000 as the number of inhabitants in continental United States in 1920 having that national origin (ascertained as hereinafter provided in this section) bears to the number of inhabitants in continental United States in 1920, but the minimum quota of any nationality shall be 100.